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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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6 In the Matters of:

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7	ACandS, INC.,) Case No. 02-12687 (JKF)
8	ARMSTRONG WORLD INDUSTRIES, INC.) Case No. 00-4471 (JKF)
9	COMBUSTION ENGINEERING, INC.) Case No. 03-10495 (JKF)
0	THE FLINTKOTE COMPANY) Case No. 04-11300 (JKF)
1	KAISER ALUMINUM CORP.) Case No. 02-10429 (JKF)
2	OWENS CORNING) Case No. 00-03837 (JKF)
3	US MINERAL PRODUCTS COMPANY) Case No. 01-02471 (JKF)
4	USG CORP.) Case No. 01-02094 (JKF)
5	W.R. GRACE & CO.,) Case No. 01-01139 (JKF)

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Debtors or Reorganized Debtors.)

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(Continued on next page)

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF PENNSYLVANIA

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6 In the Matters of:

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7 MID-VALLEY, INC. Case No. 03-35592

8 NORTH AMERICAN REFRACTORIES CO.) Case No. 02-20198

9 PITTSTURGH CORNING CORP.) Case No. 00-22876

10 Debtors or Reorganized Debtors.)

12

13 United States Bankruptcy Court

14 | 824 North Market Street

15 | Wilmington, Delaware

16

17

17 | March 28, 2011

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20 BEFORE:

21 HON. JUDITH K. FITZGERALD

22 U.S. BANKRUPTCY JUDGE

23 DISTRICT OF DELAWARE

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2 HEARING re Motion of Garlock Sealing Technologies LLC for Entry
3 of an Order, Pursuant to 11 U.S.C. § 350(b), Fed. R. Bankr. P.
4 3020(d), 3022 And 5010, Reopening Chapter 11 Bankruptcy Cases
5 for the Limited Purpose of Seeking Access to 2019 Statement

6

7 HEARING re Motion of Garlock Sealing Technologies LLC to
8 Intervene for Limited Purpose of Seeking Access to Judicial
9 Records

10

11 HEARING re Amended Motion of Garlock Sealing Technologies LLC
12 for Order Authorizing Access to 2019 Statements Filed in This
13 Court and for Related Relief

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15 HEARING re Garlock Sealing Technologies LLC's Hearing Exhibits

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10 Attorneys for Debtor, The Flintkote Company and Flintkote
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24

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Page 37

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2 THE HOGAN FIRM

3 Attorneys for Various Law Firms

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5 BY: DANIEL K. HOGAN, ESQ.

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15 Attorneys for Mount McCainley & Everest Insurance Co.

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18 (TELEPHONICALLY)

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20 WARREN H. SMITH & ASSOCIATES, P.C.

21 Attorneys for Warren H. Smith

22

23 BY: WARREN H. SMITH, ESQ.

24 (TELEPHONICALLY)

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Page 38

1 P R O C E E D I N G S

2 THE COURT: Just for the record, in Kaiser Aluminum,
3 I've signed the order that Mr. Minuti handed me with respect to
4 the heard matter. And so let me give it --

5 Okay. I think what we'll do is start with the Garlock
6 matters that have been filed in ACandS, Armstrong World
7 Industries, Combustion Engineering, Flintkote, Kaiser Aluminum,
8 Owens Corning, US Mineral Products, USG Corporation and W.R.
9 Grace.

10 I don't think I've got entries of appearance in court,
11 though. I better do that first, please. Good morning.

12 MR. WERKHEISER: Good morning, Your Honor. Morris
13 Nichols Arsh & Tunnell LLP, Delaware counsel for Garlock
14 Sealing. I'm joined at counsel's table by my colleague,
15 Matthew Harvey from our firm, and then our co-counsel, MSSRS.
16 Garland Cassada and Richard Worf.

17 THE COURT: All right. Thank you.

18 MR. WERKHEISER: Thank you, Your Honor.

19 MR. ESSERMAN: Good morning, Your Honor. Sandy
20 Esserman on behalf of various law firms.

21 MS. RAMSEY: Good morning, Your Honor. Natalie
22 Ramsey, Montgomery, McCracken, Walker & Rhoads on behalf of
23 various law firm objectors.

24 MR. SCHEPACARTER: Good morning, Your Honor. Richard
25 Schepacarter for the United States trustee.

Page 39

1 MR. LOCKWOOD: Good morning, Your Honor. Peter
2 Lockwood on behalf of the Trust Advisory Committees of the
3 Grace, Flintkote, Pittsburgh Corning and NARCO Trust.

4 MR. MADRON: Good morning, Your Honor. Jason
5 Madron --

6 MR. LOCKWOOD: Excuse me. I apologize.

7 MR. MADRON: That's okay.

8 MR. LOCKWOOD: I misspoke, Your Honor. On behalf of
9 the Asbestos Claimants' Committee. It's not the Trust Advisory
10 Committee. I apologize, Your Honor.

11 THE COURT: All right.

12 MR. LOCKWOOD: Sorry.

13 MR. MADRON: That's quite all right. Again, Your
14 Honor, Jason Madron of Richards Layton & Finger on behalf of
15 Armstrong World Industries. I'm also joined on the telephone
16 by Ms. Dandeneau and Ms. Zigman of Weil Gotshal, my co-counsel.

17 MR. LEONHARDT: Good morning, Your Honor. Scott
18 Leonhardt, The Rosner Law Group. I'm here on behalf of the
19 reorganized debtors of U.S. Minerals and ACandS. I'm also
20 joined by my co-counsel, Kevin Irwin, from Keating Muething &
21 Klekamp. Thank you.

22 MS. ZIEG: Good morning, Your Honor. Sharon Zieg of
23 Young Conaway Stargatt & Taylor on behalf of the futures
24 representative in ACandS, Flintkote and Pittsburgh Corning.

25 MR. ISENBERG: Good morning, Your Honor. Adam

Page 40

1 Isenberg, Saul Ewing, on behalf of reorganized Owens Corning.
2 I'm here with Mark Minuti of our Wilmington office. Thank you.

3 MR. FINCH: Good morning, Your Honor. Nate Finch of
4 Motley Rice on behalf of certain Motley Rice clients in the
5 various bankruptcy cases.

6 THE COURT: Good morning.

7 MR. HORAN: Good morning, Your Honor. Thomas Horan of
8 Womble Carlyle Sandridge & Rice along with Michael Rosenthal of
9 Gibson Dunn & Crutcher for the Fuller-Austin Asbestos Trust, U.
10 Texas Asbestos Trust, NGEC and one other, Your Honor. Thank
11 you.

12 THE COURT: Anyone else? Mr. Cassada, are you
13 presenting the argument?

14 MR. CASSADA: Yes, Your Honor. Thank you. Good
15 morning. Thank you again. Your Honor, on behalf of Garlock
16 Sealing Technologies, there are several motions pending before
17 you in twelve different bankruptcy cases. There are motions to
18 intervene in twelve cases, motions to reopen cases in seven of
19 the twelve. And then in all of the cases, Your Honor, Garlock
20 has renewed its motions for access to Rule 2019 statements.

21 I will briefly address the legal issues. Mr. Worf,
22 again, will address the exhibits. We'll move to admit the same
23 exhibits that we moved for last time plus the affidavit that
24 was submitted with our original motion. And then we'll sit
25 down.

Page 41

1 I'm not going to rehash all of the arguments that were
2 made in support of the motion to -- for access unless the Court
3 has questions about that because that was thoroughly argued
4 before.

5 THE COURT: Before we get to the substance, Mr.
6 Cassada, could I just ask how I'm supposed to be getting the
7 binders because I didn't get everything that was filed. We
8 found some things on the docket. I'm not sure I've seen
9 everything because I don't know if everything's been filed. So
10 is Garlock taking the responsibility for putting the binders
11 together so that I make sure that I have everything that is
12 filed in all these cases?

13 MR. CASSADA: Thank you, Your Honor. Let me let Mr.
14 Werkheiser address that.

15 THE COURT: All right. Thank you. Mr. Werkheiser?

16 MR. WERKHEISER: Good morning, Your Honor. We did get
17 a communication from your chambers, I think, shortly before the
18 deadline for the preliminary binder to be submitted indicating
19 that Your Honor wanted us to prepare binders. So we did make
20 an effort to do that. If there was something that was omitted,
21 I apologize. I'm not sure what didn't get included.

22 THE COURT: Well, I didn't get anything from Owens,
23 Owens Corning, at all --

24 MR. MINUTI: Your Honor, sorry to stand up.

25 THE COURT: -- in this binder.

Page 42

1 MR. MINUTI: We did --

2 MR. ISENBERG: We did send a binder over also, Your
3 Honor.

4 THE COURT: Yes. I'm sorry. I'm addressing Garlock's
5 pleadings.

6 MR. MINUTI: That's fine. Thank you.

7 UNIDENTIFIED SPEAKER: Your Honor, can I say
8 something? It is my understanding that someone at Garlock was
9 going to take care of all the 2019 cases. Some counsel for
10 some of the other cases were unaware of that. What we got from
11 Garlock did not include everything that was filed in all the
12 cases. The preliminary agenda, I don't think, has any of the
13 Pittsburgh cases identified and tabbed. So --

14 THE COURT: Okay. We just --

15 UNIDENTIFIED SPEAKER: -- we want --

16 THE COURT: Yeah. I need to know who's going to take
17 the responsibility -- I don't think I've issued any orders but
18 perhaps I need to because I do need to get everything that's
19 filed so that I can be prepared for hearings. And I'm not sure
20 that I have everything. Hopefully I do but I just don't know.
21 So is Garlock going to take the responsibility for these series
22 of motions that have been commenced by Garlock for putting the
23 binders together.

24 MR. WERKHEISER: And, Your Honor, we'll proceed in
25 whatever manner the Court prefers or directs. We did receive

Page 43

1 the communication from your chambers saying that we should do
2 it for this hearing. We attempted to do so and if we did it
3 imperfectly, I apologize.

4 THE COURT: Okay. Well, yes, if you would please --
5 everyone who's filing anything, make sure -- Mr. Werkheiser, is
6 it your firm that's putting the materials together?

7 MR. WERKHEISER: Yes, Your Honor.

8 THE COURT: Okay. Send a copy of everything to Mr.
9 Werkheiser so that he can put everything in the preliminary
10 binders. And if you would do it, please, in the traditional
11 format: your motions separately tabbed items and the responses
12 separately tabbed. And then if there are replies or sur-
13 replies, which I am going to be very loathe to grant leave to
14 file in these cases because there's been so much done already.
15 If we even another round, I don't know. We'll see -- then
16 those separately tabbed as well. And then if you'd just do an
17 index so I have some clue as to what is included in the
18 binders, that would be helpful.

19 MR. WERKHEISER: And, Your Honor, just so we
20 understand from a formatting point, if there is further agendas
21 necessary -- I mean, what we tried to do was have sort of a
22 global one main agenda that would cross all of the cases. Do
23 you want separate agendas prepared --

24 THE COURT: No, no.

25 MR. WERKHEISER: -- for each individual case?

Page 44

1 THE COURT: One agenda is fine. I just want one
2 consolidated agenda that tells me what's behind what tabs so
3 that I can find them. That's all.

4 MR. WERKHEISER: Okay. And we'll item index if we're
5 doing a further agenda.

6 THE COURT: All right.

7 MR. WERKHEISER: Thank you, Your Honor.

8 THE COURT: Thank you. Oh, yes, Mr. Werkheiser, if
9 you'd -- include all of the cases in which anybody's filed
10 anything, including the Pittsburgh cases because I'm hearing
11 all these hearings in a consolidated fashion. So the
12 Pittsburgh cases are on today's agenda to the extent that
13 they're Garlock motions.

14 MR. WERKHEISER: Understood, Your Honor. We'll make
15 sure that happens. And in the future, I know Garlock is
16 separately represented by local counsel in Pittsburgh but we
17 will coordinate with them.

18 THE COURT: All right.

19 MR. WERKHEISER: Thank you.

20 MR. LEONHARDT: Sorry, Your Honor. Just very briefly
21 -- Scott Leonhardt at The Rosner Law Group, local counsel to US
22 Minerals and ACandS, the reorganized debtors. Just wanted to
23 state for the record that we did reach out to Garlock's local
24 counsel and they had agreed to prepare the binders. So to the
25 extent they weren't done correctly, we certainly apologize.

Page 45

1 THE COURT: Okay.

2 MR. LEONHARDT: Just wanted to say on the record that
3 we've reached out.

4 THE COURT: That's fine. I just want to make sure I
5 have everything. This issue is only just to make sure that my
6 staff and I have an opportunity to read the things that are
7 filed. That's all. So, perhaps, Mr. Werkheiser, after this
8 hearing, if you could just go through the binder, copy the
9 binder that you have and make sure that, in fact, I do have
10 everything. I do have Owens. They filed a separate binder.
11 But except for that, to make sure that what you included
12 includes everything. And I don't know -- we printed the
13 Pittsburgh case binders?

14 MR. WERKHEISER: Yes, Your Honor. And I do believe
15 the Owens material did make it into our binder as well.

16 THE COURT: Oh, okay. It may be. I saw it --

17 MR. WERKHEISER: But it may be that some of the
18 Pittsburgh materials didn't get in there and we will
19 certainly --

20 THE COURT: Include those.

21 MR. WERKHEISER: -- provide those to chambers if, for
22 some reason, they were omitted.

23 THE COURT: All right.

24 UNIDENTIFIED SPEAKER: I have Mid-Valley's.

25 THE COURT: He's adding Mid-Valley.

Page 46

1 MR. WERKHEISER: I'm sorry? Which --

2 UNIDENTIFIED SPEAKER: Mid-Valley's.

3 MR. WERKHEISER: Mid-Valley's?

4 THE COURT: I have Mid-Valley's response. It was --
5 that was printed separately. But I think it would be helpful
6 to have everything in the set of binders so that we can refer
7 to the documents. That's all I'm asking. Just go through it.
8 Make sure that whatever was filed, we got some kind of copy
9 somewhere.

10 MR. WERKHEISER: We will do that, Your Honor --

11 THE COURT: Okay.

12 MR. WERKHEISER: -- and notify chambers if we run
13 across anything that wasn't included in our materials.

14 THE COURT: All right. Thank you. Okay, Mr. Cassada.

15 MR. CASSADA: Thank you.

16 THE COURT: Thank you.

17 MR. CASSADA: Thank you, Your Honor. Your Honor, very
18 brief background statement. Garlock moved for access to
19 Exhibits to Rule 2019 statements filed by law firms in these
20 twelve bankruptcy cases. Consistent with Rule 2019, the
21 statements state that the exhibits identify personal injury
22 creditors of the respective debtors. Now some of these would
23 be claimants with disputed unliquidated claims. Others would
24 be claimants whose claims have been resolved subject to a
25 settlement agreement.

Page 47

1 Rule 2019 statements and exhibits are judicial records
2 required under the law to be opened to public exception unless
3 some -- excuse me -- public inspection unless some exception
4 exists. In these twelve cases, the exhibits were not placed on
5 the electronic docket but filed with the clerk on compact
6 disks. The Court entered orders in each of the twelve cases
7 that the exhibits are subject to access upon motion and order.
8 And those orders remain in effect. The Court also ordered that
9 when a case is closed, the clerk shall archive the 2019
10 statements and supplements with the case filed.

11 It's important to note than when challenged by certain
12 insurance companies in the case, the district court and the
13 Third court on appeal explained that the orders do nothing more
14 than establish procedures for parties and members of the public
15 to obtain access. There has been no findings or rulings to the
16 effect that any reason exists to restrict the public's access -
17 - right of access to the exhibits. Garlock contends it is
18 entitled to the exhibits; in fact, has a presumptive right to
19 access the exhibits because they are judicial records to which
20 Garlock, as a member of public, has a right under Code section
21 107, the First Amendment to the United States Constitution and
22 common law.

23 The Court, on February 14, ruled from the bench that
24 Garlock's were procedurally defective because Garlock had not
25 properly moved to intervene in the twelve cases or to reopen

Page 48

1 seven cases that have been closed. Since February 14, Garlock
2 has filed motions to intervene in all the cases and motions to
3 reopen in the seven closed cases. And we're fortunate, Your
4 Honor, in that there is extensive case law in the Third Circuit
5 regarding the public's right to access judicial records and, in
6 fact, addressing the very issues before the Court today. We
7 believe, at the end of the day, the law is clear that Garlock
8 has a right to intervene in the cases to seek access to the
9 Rule 2019 statements and even in the seven cases that have been
10 closed.

11 Your Honor, I'll begin with our motion to intervene.
12 And we have cited and discussed extensively several cases
13 including the case Pansy v. Borough of Stroudsburg. And I'll
14 refer to that case in connection with both of our motions. But
15 in Pansy, the Third Circuit reaffirmed that the procedural
16 device of permissive intervention is an appropriate way, but
17 not necessarily the only way, for a litigant who is not an
18 original party to an action to challenge a protective or
19 confidentiality order.

20 There are two questions associated with intervention.
21 First is standing. And in these cases, it's clear, under
22 Pansy, that Garlock has standing. The Third Circuit has
23 repeatedly recognized that third parties have standing to
24 obtain access to judicial records. For standing, the parties
25 seeking access need only show that there is an order presenting

Page 49

1 an obstacle to access of a judicial record. A ruling giving
2 Garlock access would redress that obstacle. Again, this is in
3 Pansy.

4 And in this Court, Judge Walrath, in the Alterra case,
5 ruled as well that that's all that need be shown to establish
6 standing. So there's an injury in fact that is redressable by
7 a ruling from this Court. Garlock has standing.

8 Now, contrary to arguments that have been raised by
9 the objectors, it doesn't matter that Garlock is not a media
10 outlet but a private litigant advancing litigation goals. The
11 Third Circuit in several cases have recognized that private
12 litigants have rights to access under the public access rules.
13 Specifically, in Bank of America v. Hotel Rittenhouse, the
14 Third Circuit rules that the applicability and importance of
15 the public right of access is not lessened because it is
16 asserted by a private party to advance its own interest in
17 pursuing lawsuits. In Bank of America, the applicant was a
18 subcontractor seeking a confidentiality -- a confidential
19 settlement agreement between a developer and its lender. The
20 subcontractor was suing the lender and claiming that the lender
21 was guilty of a conspiracy and that the settlement agreement
22 would somehow support that claim.

23 Likewise, in the case of Leucadia v. Applied Extrusion
24 Technologies, the Third Circuit ruled that a private litigant
25 had standing to intervene to seek public access to judicial

Page 50

1 records in a case where shareholders of a corporation who were
2 not parties to the original case sought documents that had been
3 filed in discovery in trade secret litigation. The Court --
4 Third Circuit likewise said that they had standing to seek
5 public access.

6 So, Your Honor, the idea that Garlock cannot be
7 regarded as a member of the public has been thoroughly rejected
8 by the Third Circuit.

9 As to intervention itself, Your Honor, we submit that
10 cause exists under Bankruptcy Rule 2018 and Rule 24(b) of the
11 federal rules. Again, Pansy v. Stroudsburg is on point here as
12 well as the Alterra case. Under Bankruptcy Rule 2018(a), the
13 Court, for cause shown, may permit any interested party to
14 intervene generally or with respect to any specified matter.
15 It's a very broad standard. Judge Walrath ruled that Rule
16 24(b)(2) regarding permissive intervention is made applicable
17 to the motion to intervene by Rule 2018(a). Under Rule
18 24(b)(2), intervention should be authorized when an applicant's
19 claim or defense in the main action have a question of law or
20 fact in common. Now, under Pansy, the Third Circuit ruled that
21 this requirement is met when intervention is sought to
22 vindicate the right of public access to judicial records.

23 Now, that the intervenor for public access does not
24 assert a claim involving the same legal theory is not a
25 consequence when the applicant is not trying to become a party

Page 51

1 to the action. The Third Circuit explained in Pansy that such
2 a strong nexus is not required when the applicant seeks
3 intervention to obtain public access to judicial records.
4 Cause to intervene is established simply by the fact that
5 Garlock cannot obtain public access without the order it seeks
6 from the Court.

7 Now the objecting firms have suggested that Pansy's
8 ruling on standing doesn't apply because this is a bankruptcy
9 case. And Rule 2018 not Federal Rule 24(b) applies. Well,
10 this is wrong. First, as Judge Walrath recognized in Alterra,
11 Rule 2018 and Rule 24(b) applies. But, second, Rule 2018 is
12 broader than Rule 24(b). 24(b) is much more restrictive.

13 Finally, Your Honor, the motion is timely and
14 prejudices no party. As the Court pointed out in Pansy,
15 there's no time requirement under Rule 24 to seek to intervene
16 by a certain deadline. When intervention is sought to
17 challenge an order to access public records, intervention has
18 been permitted long after cases have been terminated, even
19 dismissed with prejudice which is what happened in the Leucadia
20 case. The Third Circuit in Pansy recognized that there's a
21 growing consensus that intervention to challenge a protective
22 order may take place after a case is terminated.

23 In Leucadia, the district court considered a motion to
24 intervene for purpose of challenging in order to gain public
25 access and denied it. The Third Circuit reversed in Leucadia.

Page 52

1 And then in the Pansy case, point out "This recognition in
2 Leucadia in combination with a forming consensus of other
3 courts of appeals provide strong reason to allow a district
4 court to grant permissive intervention in order to litigate
5 ancillary issues such as public access even after a case has
6 been concluded.

7 And there's no argument that intervention could result
8 in any prejudice of any kind. The cases concluded -- some of
9 these cases have concluded - most of them, even the open
10 ones -- there are many issues that have been decided. Garlock
11 doesn't seek to intervene as a party to change any result just
12 to gain access to judicial records. There's no prejudice.

13 Now moving, Your Honor, to the motion to reopen the
14 cases, Bankruptcy Code Section 350(b) is very broad. It says a
15 case can be reopened in the court in which the case was closed
16 to administer assets, to record relief to the debtor or for
17 other cause. Now the Third Circuit has held that the cause
18 standard is very broad. And the bankruptcy court has broad
19 discretion to reopen cases if it's necessary and if it's
20 necessary in this case. And we believe that, if it is
21 necessary, that a request for access to judicial records
22 establishes cause.

23 There's only one decision on point. That decision's
24 been briefed by us and the objectors. And that's the North Bay
25 General Hospital case out of the Southern District of Texas.

Page 53

1 But in that case, the bankruptcy court easily concluded that
2 the case could be reopened to consider an application for
3 access to judicial records. Its reasoning was that the
4 applicant seeks to access judicial records where public access
5 was restricted. And in that particular case, the Court had
6 never ruled whether restricting access was necessary or proper.

7 And, Judge, also I stated that the Court stated in the
8 order that it would retain jurisdiction over the order. We
9 think this reasoning applies as well in this case, in all of
10 these twelve cases. The exhibits have remained off the docket
11 subject to the order notwithstanding the cases being closed.
12 If the public wants access to them, the only way they can get
13 them under the order is to apply with the court.

14 We believe that the Court did retain jurisdictions in
15 the orders. And we think at least in four of the seven closed
16 cases that if a retention of jurisdiction was necessary in four
17 of the seven closed cases, the Court did precisely that in the
18 orders closing the cases. And there's never been a finding as
19 the district court has found that a basis exists to overcome
20 the presumptive right of public access.

21 And finally, Your Honor, there is no prejudice. And
22 there's no expense to the estate or to any party. Garlock will
23 pay the cost of copying the exhibits. No relief that's been
24 entered by the Court in any of the cases will be altered. And
25 we don't believe that there's any need for the payment of U.S.

Page 54

1 trustee's fees if the cases are opened for the purpose of
2 permitting access. And, in fact, we believe that there's ample
3 precedent in this court to open cases for limited purposes and
4 close them without the payment of a fee.

5 Your Honor, we also don't believe that there's a need
6 to reopen the cases. We know the Court has ruled in this. But
7 I'd like to address it briefly. The Supreme Court in the Nixon
8 case ruled that the Court hasn't had jurisdiction in power to
9 supervise its records and to hear motions regarding records.
10 Specifically, in the context of a bankruptcy case, the advisory
11 notes to Rule 3022 state that after a case is closed, the
12 bankruptcy court continues to have jurisdiction to interpret
13 and enforce orders entered in the cases.

14 In Leucadia and Pansy, two decisions I've spoken
15 about, the Third Circuit ruled that the Court could exercise
16 jurisdiction after cases were terminated. In Pansy, in
17 particular, the Court ruled that an independent jurisdictional
18 basis is not required because the intervenors did not seek to
19 litigate a claim on the merits. And where they seek merely to
20 gain access to documents under a Court order, jurisdiction's
21 based on the fact that the Court already has power to interpret
22 its own orders and to provide relief under protective orders.

23 And finally, Your Honor, we believe that in at least
24 four of the cases, the Court retained jurisdiction to hear
25 these motions just as it retained jurisdiction in the ACands

Page 55

1 case to consider the Trust complaint. Specifically, for
2 example, in the Armstrong case, the plan said that "The Court
3 shall retain and shall have exclusive jurisdiction over any
4 matter arising under the Bankruptcy Code, arising in or related
5 to the Chapter 11 case of the plan or to perform any of the
6 following acts." So there's a very broad retention of
7 jurisdiction there. And in the order closing the case, the
8 Court ordered that it would retain jurisdiction as provided for
9 in the plan.

10 And in some cases, such as the Combustion Engineering,
11 the retention of jurisdiction was much more specific. Not only
12 did it include the broad language that I just described, Your
13 Honor, but it also included language to the effect that the
14 Court retain jurisdiction here and determine any other matters
15 related hereto including the implementation and enforcement of
16 all orders entered by the bankruptcy court in the Chapter 11
17 case. So this is an implicit recognition of what the advisory
18 rules to -- Advisory Note's rule 3022 states and that is that
19 the Court, even after cases close, retains jurisdiction to
20 interpret and enforce its orders.

21 There's similarly specific language like that, Your
22 Honor, in other cases -- in other orders closing cases. In
23 Owens Corning, for example, and there's a more specific
24 retention of jurisdiction and the confirmation order that is
25 specifically reserved in the order closing the case. And in

Page 56

1 USG, there's a general or broad retention of all jurisdiction
2 to the fullest extent provided under the jurisdictional
3 statutes.

4 So, Your Honor, we believe that the Court, if it's
5 necessary to have a retention of jurisdiction provision in
6 order to hear a matter without reopening the case -- we believe
7 that the Court has done that in these cases.

8 Your Honor, I'd like to briefly address one point that
9 was raised by the Court on February 14 when we were here and
10 that's been raised in some of the pleadings and that is
11 Garlock's purpose. Your Honor, we don't believe that Garlock's
12 purpose is relevant except that the Court has stated a concern
13 that maybe the purpose isn't a proper purpose which some of the
14 cases say that if a purpose is not proper then that might be a
15 basis for denying a right of public access. But Garlock seeks
16 the document, these exhibits, for use in its own bankruptcy
17 case. And that can be used in a number of manners.

18 One of those is to determine whether claimants were
19 consistent in the stories they were telling about whether they
20 had a claim against one of the four bankrupt co-defendants.
21 And these are claims that Garlock faced in the tort system.
22 And we believe that the statements will show that there's a
23 substantial overlap between the claims that are pursued in
24 bankruptcy cases not only overlap between the cases Garlock
25 received in bankruptcy but Your Honor is essentially receiving

Page 57

1 the same claims in every bankruptcy case. We believe that the
2 claims will show that Garlock's liabilities -- it's the cost to
3 resolve claims were temporarily inflated by the bankruptcy
4 cases. And in fact, I don't believe there's much of a dispute
5 there. But it's important for us to be able to show the extent
6 to which there was an overlap between the claims against
7 Garlock and claims against multiple co-defendants. We believe
8 these documents would be helpful in showing that.

9 Your Honor, the 2019 statements also provide a
10 database showing aggregate claims filed against the twelve
11 defendants. There's good reason to believe that the claims
12 filed against these defendants represent all or virtually all
13 of the claims asserted against defendants in the tort system.
14 That evidence would be helpful in our case for a number of
15 reasons. Among others, it will assist the parties and the
16 Court in determining the voracity of different incidence models
17 that the experts will use to predict incidents of disease.

18 THE COURT: Wait. I'm sorry. Would you state that
19 one for me -- you believe that this will show that -- the
20 aggregate claims database will show that the claims against,
21 essentially, the trust represent the claims that would have
22 been filed in the tort system?

23 MR. CASSADA: Yes.

24 THE COURT: Yes. Well, isn't that kind of a foregone
25 conclusion? They're not in the tort system. So, in order to

Page 58

1 show they had a claim against the defendant, they have to
2 assert it in bankruptcy if there is no tort system defendant to
3 assert it against and they have a claim against the --

4 MR. CASSADA: Correct.

5 THE COURT: -- trust.

6 MR. CASSADA: What we believe is that, taken together,
7 the Rule 2019 statements will show the universe of all claims
8 filed in the tort system, the universe of all people who were
9 injured or claimed to have been injured by asbestos during the
10 last decade and who actually sought a remedy in the tort
11 system.

12 THE COURT: Well, it will show all of the claims that
13 were filed against the defendants that would have been
14 defendants in the tort system but for the fact that they filed
15 bankruptcy and are now in a trust over the period of time that
16 you seek, yes --

17 MR. CASSADA: Yes.

18 THE COURT: -- 'cause they didn't have another place
19 to file.

20 MR. CASSADA: Yes.

21 THE COURT: So, I mean, that's a foregone conclusion.
22 It is what it is. It's going to show the claims that were
23 filed against the trust, yes.

24 MR. CASSADA: Yes. And we believe that given the
25 industry's cover that it will show all of the ca -- it'll be a

Page 59

1 good proxy for the universe of claims. Period. Not just
2 against the company.

3 And, of course, as I've indicated, it'll show the
4 overlap between claimants who pursue the remedy as the debtors
5 in our cases and the debtors in these cases.

6 THE COURT: The creditors? You said that -- I'm
7 sorry. It'll show the incidents of overlap --

8 MR. CASSADA: Show the overlap --

9 THE COURT: -- between --

10 MR. CASSADA: -- between claimants who pursue a remedy
11 against the debtors in these twelve cases.

12 THE COURT: Okay.

13 MR. CASSADA: And the debtors --

14 THE COURT: And against Garlock.

15 MR. CASSADA: And the debtors in our cases.

16 THE COURT: Well, then why don't you give them the
17 list of claims that are filed against Garlock and have people
18 search and see whether or not those claims are filed against
19 Garlock. That would show whether or not they filed claims
20 against some other entity. But that's something Judge Hodges
21 ought to be ruling about in your claims against the trust not
22 me with respect to the 2019 statements.

23 MR. CASSADA: But all -- yes --

24 THE COURT: See, the problem is, Mr. Cassada -- I
25 still go back to this. What you're really asking for is

Page 60

1 information either that's in the ballots to the extent that
2 it's a claim against the debtor before confirmation or the
3 trust information to the extent that it's a claim against the
4 trust after confirmation. The 2019 statements don't show any
5 of this.

6 MR. CASSADA: The --

7 THE COURT: They're not claims.

8 MR. CASSADA: Yeah. The 2019 statements -- consistent
9 with the rule and consistent with the language in the 2019
10 statements show people who hold claims against the debtors.

11 THE COURT: No. They show lawyers in -- let's just
12 limit it for the moment to lawyers. They show lawyers who
13 represent more than one entity who may have a claim against the
14 debtor. That "may" is a significant issue because they haven't
15 filed claims yet. So, yes, the lawyers are saying I represent
16 A, B, C and D and A, B, C and D may have claims against the
17 debtor. But until they either vote or file a claim against the
18 trust, they haven't pursued a claim against the debtor unless,
19 of course, they've already filed --

20 MR. CASSADA: Sure.

21 THE COURT: -- something in the tort system. I'm
22 excluding --

23 MR. CASSADA: Yes.

24 THE COURT: -- that possibility 'cause that's kind of
25 irrelevant to the 2019 issue.

Page 61

1 MR. CASSADA: Sure. Well, I mean, to begin with, Your
2 Honor, I don't believe what they say affects our entitlement to
3 the -- to public access.

4 THE COURT: But --

5 MR. CASSADA: And that's --

6 THE COURT: -- you're suggesting, though, that you
7 want a right to public access for a private purpose which is to
8 prove that these entities have claims against Garlock and have
9 also filed claims against another entity. That's not a public
10 purpose. That's a private purpose. It may be a legitimate
11 private purpose but it's not a public purpose. It's private.
12 So, number one, I don't see that that's a right to public
13 access. It's discovery in your own case. That's what it is.
14 So I don't think it fits that public access mold.

15 But to the extent that somehow it is looking for
16 public information, your intended purpose is to compare claims.
17 And the 2019 statements don't compare claims or don't provide
18 claims. So the purpose isn't proper because what you're trying
19 to do with the information isn't supported by the information
20 itself. These aren't claims. So --

21 MR. CASSADA: Here's --

22 THE COURT: -- I'm --

23 MR. CASSADA: Well --

24 THE COURT: -- I'm still --

25 MR. CASSADA: Let me --

Page 62

1 THE COURT: -- lost.

2 MR. CASSADA: Let me address -- there are several
3 points I want -- I mean, to begin with, the Third Circuit
4 disagrees with your statement about the standard being somehow
5 different for a private litigant versus someone -- some other
6 member of the public. In fact --

7 THE COURT: Actually, I don't think it did. The cases
8 that you talked about all involved an entity that had a need
9 for the information related to litigation against a party to
10 one of those agreements. There aren't really parties in the
11 2019 statements. There are lawyers who are filing a statement
12 in compliance with the national rule that says they have to
13 identify who they represent if they represent more than one
14 entity. So it isn't a party in a litigation. And the need
15 isn't related to that litigation. So the cases in the circuit
16 do say if you're a private entity and there is something
17 filed -- almost all of these issues involve settlement
18 agreements, not all, but almost all. There's something in the
19 settlement agreement that may advance your specific cause
20 because those entities alleged a specific cause. The
21 subcontractor was suing the contractor. I can't remember what
22 happened in Pansy but it was also another specific
23 allegation --

24 MR. CASSADA: Well, that was a newspaper in Pansy.

25 THE COURT: Oh, that was a newspaper.

Page 63

1 MR. CASSADA: You're thinking of Leucadia. They were
2 derivatives, yeah.

3 THE COURT: Yeah, that's right. But -- and that's a
4 different issue with respect to public access. I mean -- so I
5 don't think that the Third Circuit has addressed this specific
6 issue at all.

7 MR. CASSADA: Well, I'm not so sure that's right, Your
8 Honor. If you read those cases, the Third Circuit doesn't do
9 much more than state why these litigants wanted the records.
10 It doesn't analyze them. In fact, in the Bank of America case,
11 it states plainly that the fact that these are private
12 litigants seeking private litigation goals doesn't lessen in
13 any way the right to public access. So I think the Third
14 Circuit -- I think it's very much on point there.

15 So I don't believe that it would be proper for this
16 Court to analyze why we need them and find them to be improper
17 in that respect.

18 Now, the other thing the Court is doing is it seems to
19 be looking down the road as if you were the judge in our case
20 and deciding whether these dockets are going to be admissible
21 or useful to us at all. And that's not the way you analyze a
22 right to public access.

23 THE COURT: No. And that's actually not what I'm
24 trying to do. That's -- Judge Hodges can take those issues on
25 in Garlock's own bankruptcy case. That's not what I'm

Page 64

1 attempting to do. When I'm looking at the purpose, I'm
2 analyzing -- I am accepting what you tell me your alleged
3 purpose is which is --

4 MR. CASSADA: One of our purposes.

5 THE COURT: Well, what are the rest of them then?

6 MR. CASSADA: I told you that we want to identify the
7 universe of claimants against all of these bankruptcy --
8 bankrupt co-defendants which, we believe, will equate to the
9 universe of claimants against everyone.

10 THE COURT: Okay. But you're still talking in terms
11 of the word "claimants". And the 2019s don't identify claims.
12 The ballots will or the claims against the trust will.

13 MR. CASSADA: Well, let's --

14 THE COURT: But the 2019s don't.

15 MR. CASSADA: Well, let's be clear about one thing.
16 These are all claimants. Now what Your Honor is suggesting is
17 maybe they don't want claims against the debtors where the
18 cases were filed. But I don't believe anyone disputes that the
19 people listed are claimants. They have asbestos-related
20 injuries and they've engaged law firms to represent them in
21 that. So they are claimants.

22 Now --

23 THE COURT: Well, no one would dispute the fact that a
24 lawyer said I represent A who may have a claim against the
25 debtor.

Page 65

1 MR. CASSADA: Well, that's -- and that's the other
2 difference I have with Your Honor. I think that the language
3 that you're using doesn't square with the rule, the order you
4 entered or the 2019 statements. There's no equivocating in
5 these 2019 statements. Nor is there in the rule. The rule is
6 for a purpose, correct, to show that a law firm has authority
7 to represent the parties he represents.

8 THE COURT: Right.

9 MR. CASSADA: But Rule 2019 requires certain
10 information to be provided. And that requirement is a
11 disclosure requirement so it's available to the public. And
12 what it requires is the identity of a creditor, the basis for
13 the creditor's claim and other information including evidence
14 that you're authorized to represent the creditor. And that's
15 what Your Honor's order required. The rule doesn't require you
16 to put down anyone out there who you represent who might have a
17 claim. It says you identify creditors. The rule says that.
18 In the 2019 statements, they don't have many in them, Your
19 Honor. If you read them --

20 THE COURT: That's true. What I --

21 MR. CASSADA: If you read them, they're all very
22 clear. And the majority of them are very specific. And they
23 say that I represent these people and these people were injured
24 by products of these defendants.

25 THE COURT: I --

Page 66

1 MR. CASSADA: There's no --

2 THE COURT: I don't think that's what they say.

3 MR. CASSADA: That is what they say, Your Honor. They
4 say what they say. But --

5 THE COURT: They do say what they say.

6 MR. CASSADA: -- it doesn't --

7 THE COURT: But I agree with you.

8 MR. CASSADA: You know, it doesn't matter.

9 THE COURT: When I was using the word "may" --

10 MR. CASSADA: If we want them, we can use them --

11 THE COURT: Mr. Cassada, when I was using the word
12 "may", I wasn't attempting to say that that's what the statute
13 says. I was attempting to say that the rule is broad enough to
14 encompass creditors, claimants, potential entities that a law
15 firm use right now when it files the 2019 statement that may
16 have a claim against the debtor. That's what I was attempting
17 to get to. It's not saying this is a ballot in favor of
18 creditor. This is not a proof of claim filed on behalf of a
19 creditor. This is simply a recognition by a law firm that it,
20 and nobody else, has the authority to represent A, B, C and D
21 in this case. That's what it is.

22 MR. CASSADA: That's the purpose of it, Your Honor,
23 but that's not what the information is that's covered. And
24 that's not the information that's required to be covered by the
25 rule.

1 THE COURT: Okay.

2 MR. CASSADA: So I just don't think that you are
3 fairly giving effect to the language of the 2019 statements we
4 seek. We've provided to you copies of 2019 statements from all
5 of the law firms that are objecting in this case. And they're
6 all very specific, Your Honor. And they all support the idea.
7 They all say I have personal knowledge. I represent these
8 people. These people have injury caused in part by exposure to
9 products of these -- of this defendant debtor. That's what
10 they say.

11 So, I mean, to the extent that we're -- that you can
12 look down the road and determine whether we can use them for
13 any particular purpose, I don't think you can say that we can't
14 use them as evidence that these people have made a statement in
15 the case that they have claims or at least their lawyers have
16 made that statement. And the exemplars will show that the
17 claimants authorized them to make those statements.

18 We also think, Your Honor, that all of the goals of --
19 public policy goals of public access are at play in Chapter 11
20 cases. There is intense public interest in understanding the
21 dimensions of asbestos claims and changing trends and claiming
22 practices. And also, the role that bankruptcies have and that
23 emerging trusts will have in the future in compensating for
24 asbestos-related injuries.

25 THE COURT: Well, well has that intense interest shown

Page 68

1 up, Mr. Cassada? 'Cause the only place I get it, frankly, is
2 Garlock. And I've had probably more than any other judge in
3 the country in terms of bankruptcy cases that have come up. So
4 where is this intense interest?

5 MR. CASSADA: We have -- Your Honor, we have provided,
6 among our exhibits, articles --

7 THE COURT: Yes, you did. Most of them are -- I don't
8 know, ten, fifteen, twenty years old. But you're saying
9 there's a current public interest --

10 MR. CASSADA: Well, some of them --

11 THE COURT: -- that you want to defend. So where is
12 that public interest?

13 MR. CASSADA: We had our -- there's an interest in
14 claims -- who the claimants are who appear and are compensated
15 in these cases. And there's a -- I think, one and a half years
16 ago, a congressman wrote asking for a hearing on the claiming
17 practices and whether claimants were filing multiple claims in
18 different places based on -- in consistent positions. I think
19 that the record is pretty clear that there is an intense
20 interest and that, obviously, bankruptcy is supposed to be a
21 very transparent process. And surely, the identities of
22 claimants, the most significant constituency in a bankruptcy
23 case, these asbestos claimants, their identity is a matter of
24 public interest.

25 THE COURT: It may be. It's also a matter of public

Page 69

1 record in the ballots.

2 MR. CASSADA: Well, I did want to bring up the ballots
3 with Your Honor because they're not so easily obtained as
4 you've suggested. They're not -- likewise, they're not on the
5 public docket.

6 THE COURT: No. But they're by claims agents that
7 have been authorized on behalf of the clerk of court to hold
8 the claims. And this Court can easily make them available.
9 The ballots can be obtained and they are matters of public
10 record.

11 MR. CASSADA: Are the ballots obtained similarly by
12 application and Court order?

13 THE COURT: I've never actually -- except for Garlock,
14 had anybody ask for them. But I think, yeah. If you can't get
15 them from the claims agent then you file a motion. But they're
16 public records. I don't see why -- I told you before in one of
17 the other cases you could get the ballots and, in fact, you
18 did. Now I don't know how complicated it was. I didn't hear
19 from you that it was a cumbersome process. Maybe it was and I
20 just --

21 MR. CASSADA: No. It was very easy. The debtor's
22 counsel provided them to us.

23 THE COURT: Okay. So then the debtor's counsel can
24 provide them.

25 MR. CASSADA: Well, we would -- I mean, you have

Page 70

1 mentioned that those are available to us --

2 THE COURT: Yes.

3 MR. CASSADA: -- in a way that -- as if we could just
4 get them. We've tried to do that and we haven't been able to
5 do that. And if the Court would direct the debtors or the
6 claims agents to provide access to the ballots, that would be
7 helpful to us.

8 THE COURT: Well, if you want those instead of this
9 2019 issue then maybe that's someplace to go. I don't see how
10 this 2019 issue advances what you're looking for. I can see
11 how the ballots may.

12 MR. CASSADA: Well, they're both judicial records,
13 Your Honor. We think we're entitled to both. And they show --
14 in a lot of ways, they show the same thing. But they show very
15 different things, too. And I explained this, and I won't
16 belabor it today, but it's a matter of timing. And that is
17 when claimants' lawyers at least first stated that these people
18 have claims then --

19 THE COURT: Well, they have to first state it when
20 they file their 2019 statements. That doesn't mean that's when
21 the claim accrued. It just means that's when they filed the
22 statement.

23 MR. CASSADA: Well, the claim would have accrued
24 before that. It's not --

25 THE COURT: Right. That's what I mean.

Page 71

1 MR. CASSADA: Correct.

2 THE COURT: So it doesn't show when the claim accrued.

3 MR. CASSADA: But it's important -- it's important to
4 Garlock to know when the claimant and the claimant's lawyer
5 knew that the claim existed.

6 THE COURT: But you won't necessarily -- well, you
7 may. But you don't necessarily know that from the 2019
8 statement either. But --

9 MR. CASSADA: Well, we --

10 THE COURT: You know as of the date they filed the
11 claim -- pardon. You know it as of the date they filed the
12 e2019 statement.

13 MR. CASSADA: Yes. And that's important information.
14 Yeah. And that's information that's not included in the
15 ballot.

16 So, Your Honor, I'll sit down now. I'm sure we'll
17 have a lot to hear from the objectors and we'll raise any
18 issues there. We do have -- I don't know if we need to go
19 through our exhibits again, Your Honor, since we did -- we
20 haven't added to our exhibits.

21 THE COURT: All right.

22 MR. CASSADA: So we've moved to admit the exhibits and
23 the affidavit -- the declaration that was filed with our
24 motion. And there have been papers filed objecting to those
25 exhibits. I don't know how much you want to get into that here

1 today.

2 THE COURT: I think I'll let the objectors speak
3 because you did identify them on the record at the last
4 hearing. I'm not sure I brought that identification but it's
5 in my notes and in the transcript as well, Mr. Cassada. So to
6 the extent someone has a specific objection, I think I can hear
7 it as they go on and then rule later. If anybody needs them
8 specifically identified again now, tell me so that I can have
9 that process done now. Okay. Mr. Esserman?

10 MR. ESSERMAN: Your Honor, I'm just unsure how you
11 want to proceed on the exhibits.

12 THE COURT: Mr. Cassada identified the exhibits at the
13 last hearing. If you want -- maybe I should just have them
14 reidentified again so that we all know we're dealing with the
15 same exhibit numbers. And then, as you're making your
16 argument, if you have an objection to any specific exhibit, I
17 think you should raise it then.

18 MR. ESSERMAN: Okay.

19 THE COURT: So let's just have them identified now and
20 then I'll hear objections as each entity argues.

21 MR. ESSERMAN: That's fine. Thank you.

22 THE COURT: Mr. Worf?

23 MR. WORF: Good morning, Your Honor. I will simply
24 identify them and then reserve any argument as necessary.

25 THE COURT: All right.

Page 73

1 MR. WORF: Like Mr. Cassada said, we are moving to
2 admit the same ones that we moved to admit at the last hearing.
3 Plus, I don't believe we moved to admit at the last hearing the
4 Exhibit A to our motion which is the affidavit of Paul Grant.

5 THE COURT: I'm sorry. Affidavit of --

6 MR. WORF: Paul Grant.

7 THE COURT: Okay.

8 MR. WORF: G-R-A-N-T.

9 THE COURT: Thank you.

10 MR. WORF: That's the one additional one. We think it
11 provides background for the motion that is helpful to the
12 Court.

13 THE COURT: All right.

14 MR. WORF: The exhibits we offered are Exhibit 1, 2019
15 statements filed by objecting law firms. Exhibit 2 was a
16 summary of statements made in Exhibit 1. Exhibit 3, 2019
17 statements filed by Kazan McClain, Brayton Purcell and Waters &
18 Kraus in the plant insulation and Thorpe insulation cases.
19 Exhibit 4 was an excerpt from the Federal Election Commission
20 Report for Obama for America. Exhibit 5 was --

21 THE COURT: Wait, wait. One second, please.

22 (Pause)

23 THE COURT: Okay. Thank you.

24 MR. WORF: Exhibit 5 was an individual's Chapter 13
25 bankruptcy petition.

Page 74

1 THE COURT: Okay.

2 MR. WORF: Exhibit 6 was an extract from the claims --

3 (Audio ends mid-sentence)

4 (Recess from 11:51 a.m. until 12:06 p.m.)

5 THE COURT: Please be seated. Okay. Mr. Worf,
6 starting with Exhibit 7, please --

7 MR. WORF: Exhibit 7 is a news article related to the
8 American Business Financial Services case.

9 THE COURT: All right.

10 MR. WORF: Exhibit 8, a list of pending cases in the
11 federal Mardoc proceeding. That's M-A-R-D-O-C.

12 THE COURT: Okay.

13 MR. WORF: Exhibit 9, a list of pending cases in the
14 Texas MDL.

15 THE COURT: All right.

16 MR. WORF: Exhibit 10, the master ballot of a certain
17 law firm in the Pittsburgh Corning case.

18 THE COURT: Okay. And then Exhibit 11 is the
19 collection of newspaper and other documents demonstrating the
20 public interest and concern regarding asbestos claiming
21 practices implicated by this motion. And I would note here
22 that most of these articles are quite recent just to follow up
23 on the point Mr. Cassada was making. Only one is from more
24 than a decade ago, Exhibit A -- or Exhibit 11A -- I'm sorry.
25 The others are from 2006 and after. We also had moved to admit

Page 75

1 the -- certain exhibits attached to our motion. Exhibit A, the
2 affidavit of Paul Grant.

3 THE COURT: All right.

4 MR. WORF: Exhibits D and E, 2019 statements filed in
5 the Pittsburgh Corning case.

6 THE COURT: Okay.

7 MR. WORF: Exhibit I, an order granting access to 2019
8 statements in the Owens Corning case.

9 THE COURT: All right.

10 MR. WORF: Exhibit J, the 2019 order in the Congoleum
11 bankruptcy case.

12 THE COURT: Okay.

13 MR. WORF: Exhibit K, a 2019 statement filed in the
14 Congoleum case.

15 THE COURT: All right.

16 MR. WORF: Exhibit L is a complaint in a state court
17 asbestos action.

18 THE COURT: All right.

19 MR. WORF: Exhibit M --

20 THE COURT: I'm sorry. M or N?

21 MR. WORF: M as in --

22 THE COURT: Mom.

23 MR. WORF: -- Mom -- is an interrogatory response in a
24 state court asbestos action.

25 THE COURT: Okay.

Page 76

1 MR. WORF: Exhibit O is a law firm's 2019 statement in
2 the Quigley case.

3 THE COURT: Okay. Thank you.

4 MR. WORF: And then Exhibit -- the exhibit that was
5 attached to our reply which, I believe, we're calling Exhibit B
6 to -- which was the order unsealing 2019 statements in the
7 Accuride bankruptcy case.

8 THE COURT: All right.

9 MR. WORF: And those are our exhibits and we move to
10 admit those.

11 THE COURT: All right. They've been admitted (sic) so
12 I'll hear the objections as the parties are arguing.

13 MR. WORF: Thank you, Your Honor.

14 THE COURT: They've been offered. I'm sorry. I said
15 admitted. I meant offered.

16 THE COURT: Mr. Esserman?

17 MR. ESSERMAN: Yes. Just as a matter of procedure,
18 Your Honor, I think we'd like to take argument on the motion to
19 intervene and the motion to reopen first. Then we'll do the
20 exhibits afterwards. And what I think we'd like to do is I'd
21 like to say a few words on the motion to intervene and the
22 motion to reopen. Then others that have comments on those
23 motions will talk. Then we'll come back to the objection on
24 the exhibits if that's okay with Your Honor.

25 THE COURT: That's fine.

Page 77

1 MR. ESSERMAN: Just a few comments, Your Honor. We've
2 of course briefed the issues on the motion to intervene. And I
3 think Your Honor has a very good handle on, number one, what
4 exactly we're talking about here in the 2019s, what they are
5 and what they are not, how they were created, what is required
6 under 2019 and what is not. We've gone through this so many
7 times. 2019 is not fixed in stone. It can be crafted by case
8 by case. And Your Honor's crafted it. And, frankly, Your
9 Honor has set the standard for a 2019 statement that's been
10 followed in almost every court, not every court, but certainly
11 in Garlock's own bankruptcy. The judge went out of his way to
12 see what you were doing in your court and take a look at your
13 court orders. And Garlock didn't want to proceed that way.
14 Frankly, I'm not surprised but the judge ruled, in fact, it
15 worked in this court and it was going to work in his court and
16 others. So he was going to proceed that way.

17 I think Garlock's overall theme to both their motion
18 to intervene, their motion to reopen and their motion for
19 authority is kind of -- it doesn't matter what their cause or
20 purpose for needing this material is. And I think that that's
21 contrary to what the -- what this Court has set out previously.
22 We've briefed this. I'm not going to go over it. I think
23 cause or purpose is important. For example, could someone just
24 come in here and say I want all this information because it,
25 number one, sets forth out a bunch of names, a bunch of

Page 78

1 addresses and a bunch of people with disease. And I want to
2 sell people certain products that implicate that. Is that
3 important? Or, I want to engage in a telemarketing aspect.
4 Or, I'm an insurance company. I want to see if any of these
5 people have insurance that I need to cancel. Are those proper
6 causes? Well, under Mr. Cassada's argument, you need not be
7 concerned about those types of causes or purpose. I think
8 cause or purpose is important. I think Mr. Cassada has laid
9 out a litigation agenda and I think that that's an important
10 feature. Your Honor set forth very clearly if 2019 was needed
11 for specific reasons and a specific 2019 that they could bring
12 it forth and you would consider it.

13 Let's take the motion to intervene. First, there's an
14 issue of standing. We've briefed a lot of this so I'm not
15 going to go over it in detail. There's an issue of standing.
16 We've already had rulings from this Court in the W.R. Grace
17 case, for example, that Garlock has lacked standing to object
18 to confirmation. Garlock has no financial interest here.
19 Garlock doesn't have a claim here. Garlock has its own
20 litigation agenda. We think that that's important. Garlock is
21 a private litigant seeking to embark on a fishing expedition
22 which may or may not bear fruit and may or may not be barking
23 up the wrong tree. I think a lot of the cases that Garlock
24 talks about and we talked about it in our papers involve people
25 that were in the zone of dispute trying to get involved in the

Page 79

1 action. Specifically, the Leucadia case involves shareholders
2 where settlement discussions involving the corporation were
3 involved. There was cause to intervene. There were litigants
4 involved. These things -- we think that that's a very
5 important feature here. We think Garlock cannot show any of
6 those issues.

7 On a motion to reopen a case, we think these cases are
8 closed. To the extent that Garlock does move to reopen, which
9 I think they have to do, they have to show standing, first of
10 all. We think that there's an issue as to whether or not they
11 have standing, whether or not they have a direct stake in the
12 case, whether or not they have an economic interest that needs
13 to be justified. Whether or not cases are reopened, Courts
14 traditionally look at why they're being reopened. Is there
15 assets to be administered? Is there some sort of a state
16 interest that needs to be adjusted. Clearly, that is not the
17 case. So we think Garlock has neither standing nor proper
18 purpose nor motive. And we think that the cases they cite are
19 inapposite.

20 We'll address the exhibits later. We do have
21 objections to the exhibits and we'd like to reserve some time
22 to talk about that.

23 THE COURT: All right.

24 MR. ESSERMAN: Thank you.

25 MS. RAMSEY: Good afternoon, Your Honor. I'd like to

Page 80

1 start with Garlock's motion to open. As a principle of
2 statutory construction under Section 350 of the Code, it's
3 clear that the statute does not support Garlock's motion to
4 open. The purpose of this statute is to allow cases to be
5 reopened for a purpose that arises in connection with that
6 bankruptcy case. And that language is clear. It's subsection
7 (b). "A case may be reopened in the court in which such case
8 was closed to administer assets, to accord relief to the debtor
9 or for other cause." And as a principle of statutory
10 construction, the other cause must relate to a matter relating
11 to that estate.

12 Garlock also does not support its position with
13 respect to case law. There are no cases that we have located
14 on point and no cases that have been cited by Garlock there on
15 point. In the Zinchiak case that's cited by Garlock, the case
16 was reopened for the purpose of determining whether a Court's
17 lifting of the automatic stay was appropriate. It was a matter
18 related to that case. In contrast, Garlock's reasons for
19 seeking to reopen the case have no basis for involvement in
20 this estate. In these estates, they don't seek to administer
21 assets, they don't seek to pursue rights of Garlock in these
22 particular cases other than the alleged general right of public
23 access.

24 That right itself, Your Honor, we do not believe is a
25 right related to this case, especially as articulated by

Page 81

1 Garlock because they have disclosed and volunteered that their
2 purposes are not related to this case but instead are related
3 to their own bankruptcy case and purposes outside the scope of
4 these Chapter 11 proceedings.

5 Similarly, Garlock relies very extensively on North
6 Bay General Hospital. But that case was also very
7 distinguishable. First of all, it is a bankruptcy decision out
8 of the Southern District of Texas. It is not binding on this
9 Court. It was under a specific fact scenario where there was a
10 fee dispute between lawyers for various committees. There was
11 a settlement of that fee dispute. There was no determination
12 by the Court in advance with respect to the sealing. It was
13 sealed by agreement of the parties. The Court did not go
14 through the extensive consideration that this Court did in
15 crafting the order to place the exhibits to the 2019 statements
16 under seal -- or off the public record.

17 The Court also had specifically maintained
18 jurisdiction over that agreed order. There was not a
19 generalized retention of jurisdiction provision to assess and
20 enforce orders of the Court as Garlock relies upon here. The
21 plaintiff alleged in the adversary proceeding that one of the
22 law firms to the agreement had engaged in a pattern of
23 wrongdoing and this agreement, the plaintiff believed, would
24 demonstrate that pattern. The Court expressly found that there
25 was a relationship between the claims that were being made and

Page 82

1 the agreed order and, accordingly, reopened the case for the
2 purpose of unsealing -- or determining whether to unseal that
3 agreed order.

4 This case is entirely different on the facts for the
5 reasons that we have articulated. Because Garlock hasn't
6 demonstrated cause within the meaning of the statute, for
7 purposes related to these cases, and there is no case law
8 support for it, we do not believe that the closed cases should
9 be reopened.

10 Turning to Garlock's motion to intervene, Garlock is
11 not a creditor and is not the debtor in these cases. So if the
12 standard is permissive intervention -- and with respect to
13 permissive intervention, the Court has a lot of discretion. In
14 exercising its discretion, clearly the purposes that Garlock
15 intends to use the information for is important. And I won't
16 belabor the point. The Court has heard argument on that at the
17 last hearing on February 14th and Mr. Esserman addressed it
18 today. But it is clear that Garlock's intention is to misuse
19 the 2019s. As the Court has said, the 2019 statements are
20 statements by counsel. And they are statements of
21 representation. To permit any party to misuse those in the
22 ways that Garlock has said that it intends to by identifying
23 individuals that are listed on those 2019s who have never taken
24 action against these debtors, who never even went as far as to
25 file a ballot, let alone make a claim against the ultimate

Page 83

1 trust, but who simply appeared on that, to have them challenged
2 as liars -- and that is Garlock's word -- because they appeared
3 on a statement that was designed by the lawyer to identify
4 those that the lawyer might represent in this case -- did
5 represent in this case who might pursue claims.

6 The Court knows, but for purposes of the record, it's
7 important to recognize that the 2019s in these cases were
8 constructed after a lot of argument, after a lot of
9 consideration, and they are an unusual hybrid. They don't
10 really fit squarely into the standard Rule 2019 construct where
11 a law firm represents two creditors or more and identifies
12 those two creditors who are active in the case. The Court has
13 made clear in numerous statements and various proceedings that
14 an asbestos law firm coming into an asbestos bankruptcy case
15 should include all of those individuals who may later take
16 action in the case and, as a result and in reliance on that,
17 the law firms go out of their way to be overinclusive on the
18 2019s. That is what those statements are. They are statements
19 of the counsel of representation of individual clients. They
20 are not statements despite the potential inadvertent forwarding that
21 tracks the statute that a lawyer might have tracked too
22 carefully and without sufficient attention or expectation that
23 someday someone would try to use that statement in that way.
24 It is a verification of representation and nothing more.

25 THE COURT: Mr. Cassada made a point that I think I

Page 84

1 let slip by me at the time. With respect to the acquisition of
2 the claim date; isn't the case that 2019 only requires the
3 acquisition of the claim date to be stated if it's within a
4 year of the filing of the bankruptcy?

5 MS. RAMSEY: I believe that's correct, Your Honor,
6 although I can't tell you, standing here, that I know precisely
7 what's in all the 2019 orders.

8 THE COURT: The nature and amount of the claim or
9 interest or the time of acquisition thereof unless it is
10 alleged to have been acquired more than one year prior to the
11 filing of the petition.

12 Okay. All right. Thank you.

13 MS. RAMSEY: Those claim dates, Your Honor; I believe
14 are routinely completed by law firms as dates that the injured
15 claimant learned of their injury. And I believe that that is
16 the date or sometimes the first date of filing of suit. I
17 believe that those are generally the way that law firms
18 understand that field to be completed. And there's no basis to
19 question whether or not that -- I haven't heard Garlock
20 articulate why that might be relevant.

21 Garlock's interest seems to be to demonstrate that
22 when a particular claimant answered interrogatories or was
23 deposed and said they had no knowledge of, for example,
24 Pittsburgh Corning exposure that they were previously or
25 simultaneously or some close date later identified on a 2019

Page 85

1 statement. And that is truly comparing apples and oranges and
2 there is no benefit to that except potential mischief,
3 especially for those individuals who, as the Court observed
4 before, may not even be aware that they're on the 2019. They
5 may have given a general authorization to their law firm to
6 represent them generally in bankruptcy matters, you know, and
7 pursue their rights in appropriate forums and -- and in those
8 situations the person may not have a specific knowledge of
9 appearing there if they're never -- there's no reason for them
10 to, if they never take further action of the case, if they're
11 ultimately determined not to have a claim. It is a reservation
12 of rights and nothing more.

13 With respect to Pansy, just briefly, and I think this
14 is fairly well address in the pleadings, but Pansy acknowledges
15 that although there is a presumptive right of access it can be
16 overcome and there are balancing tests that apply and one of
17 those balancing tests is whether there are privacy interests or
18 whether disclosure could cause embarrassment. Here our
19 contention is, particularly with respect to those people who
20 never take action further against that debtor, against a trust
21 created in the bankruptcy, they deserve a heightened right of
22 privacy. They did not, voluntarily, come into court and seek
23 to pursue any rights or claims. It is purely a function of
24 2019 and the unique circumstances of an asbestos case that they
25 appeared in a 2019 in the first place.

Page 86

1 With respect to Pansy also, it is clear that purpose
2 is important and we do contend that it is an improper purpose
3 to use the form in that way that Garlock has articulated it
4 intends to.

5 Also, Your Honor, there is, in the Third Circuit, a
6 clear test that applies a continuum so that orders and actions
7 that are more important in disposing of issues in the case are
8 more likely to be subject to a right of public access, there's
9 a greater weight afforded to those than those orders that deal
10 with ministerial types of issues and this is more of a
11 ministerial issue. It only becomes important if there is a
12 question about representation. It is not key in the case. It
13 does not determine any rights or interests and therefore it
14 should be accorded lesser interest by the public and by the
15 press and the other interests of privacy and countervailing
16 reasons and proper purpose therefore clearly weigh against the
17 disclosure.

18 THE COURT: Well, the cases also talk about the
19 commercial interest and I think on the 14th of February someone
20 started to argue this but I'm not really sure that it was
21 articulated explicitly.

22 The law firms have a client database and I don't --
23 and obviously filing the 2019 statements indicates a part of
24 that client database. Is that commercial information, the
25 client database?

Page 87

1 MS. RAMSEY: Your Honor, the law firms contend that it
2 is absolutely commercial information. In part, because I think
3 the commercial information the Court is thinking about is there
4 was a question about commercial information being their -- the
5 terms of their engagement with their clients.

6 THE COURT: Yes.

7 MS. RAMSEY: And the relationships that they have with
8 other law firms.

9 THE COURT: Yes.

10 MS. RAMSEY: And those relationships clearly fall
11 within commercial protections of the law firms.

12 THE COURT: So the exemplars that were there would
13 show the agreement with the client but not necessarily the
14 agreement with another firm?

15 MS. RAMSEY: It may or may not, Your Honor. Sometimes
16 they do and I don't think they always do. But there are
17 circumstances where there are co-counsel relationships that are
18 disclosed as part of the 2019s.

19 THE COURT: Okay.

20 MS. RAMSEY: Your Honor on the merits, again I don't
21 want to belabor the record, we do incorporate the arguments
22 that were made on February 14th but I think, just to recap the
23 purposes of 2019 when considered against the purposes for use
24 here, clearly demonstrate that on the merits this motion also
25 should be denied. This is a litigation tactic. It is an

Page 88

1 after-the-fact attempt at a gotcha, of a pleading that was
2 never intended to be used for this purpose and to permit it to
3 be now opened for these purposes would create significant
4 question and disruption in these 2019 statements going forward
5 and with respect to law firms in the past with respect to how
6 to deal with these issues going forward and there would have to
7 be some other way to deal with them in terms of the lawyers
8 disclosing who they represent. But it would not further the
9 policies of asbestos Chapter 11 proceedings to have law firms
10 be careful, overly careful, about making sure that the only
11 people who appeared on that list were people who they could
12 proceed with trial with today or people who had filed a
13 complaint because the Court's going to be faced with constant
14 and continuous amendment and there's going to be a significant
15 delay in the ability of professionals to talk about these cases
16 and identify which professionals the debtor should be dealing
17 with as it goes through the negotiation process.

18 THE COURT: All right.

19 MS. RAMSEY: Thank you, Your Honor.

20 THE COURT: Mr. Lockwood?

21 MR. LOCKWOOD: Your Honor, I first want to say that I
22 agree with everything Ms. Ramsey said. I thought she gave a
23 very eloquent and persuasive description of the law here. My
24 only contribution to this is I think it would be helpful to
25 back up a little bit to sort of talk about how we got into the

Page 89

1 2019s in the first place which was a long, long time ago, far,
2 far away.

3 As Your Honor will undoubtedly recall, it was a
4 considerable dispute at the beginning of the case over whether
5 2019s should have to be filed at all in these cases, as some of
6 the briefs that were put in at the time pointed out, the
7 purpose for Rule 2019 originated back in the '30s with ad hoc
8 creditor committees taking control of the bankruptcy cases
9 under the old, pre-code, practice. And there was a great
10 concern that, which the SEC was a significant proponent of, of
11 wanting to make sure that the parties in a bankruptcy case and
12 the courts knew exactly who were being represented by whom when
13 lawyers showed up and actually started doing things in cases.

14 And Rule 2019, one of the problems with the rule is
15 it's not terribly precise on when a Rule 2019 statement is
16 required because it talks about in connection with the
17 representation and it doesn't say what it is that causes a
18 lawyer to commence representing a client. And we were
19 confronted in these cases with law firms who represented
20 thousands of claimants and that law firm would, in most
21 instances, not have filed a proof of claim or a ballot so they
22 wouldn't have taken any affirmative step. They wouldn't be --
23 they wouldn't have filed -- it wouldn't be involved in claims
24 litigation, they wouldn't be doing anything except observing
25 the case.

Page 90

1 On the other hand, a lot of them wanted to be kept
2 abreast so they would file requests to be put on a 2002 list,
3 which they regarded as a fairly, sort of, innocuous way of
4 wanting to be kept abreast of what was going on. But because
5 of that and because some of them had actually went so far as to
6 enter an appearance, even though they weren't doing anything,
7 there was no motion that they were pressing or claim that they
8 were pressing, the court found itself in a position in which
9 there were these tort lawyers with thousands of claimants out
10 there who, on the face of them, may or may not have done
11 something that could be regarded as representing the clients in
12 the case. And so the court felt like those lawyers should, if
13 they wanted to represent themselves or had already represented
14 that they had clients in the case, to file 2019s.

15 But the court recognized, at the time, that this was
16 a, I think the term Ms. Ramsey used, hybrid situation which I
17 think is a good term to describe it because what the -- from
18 the lawyers' perspective and their clients' perspective the
19 concern was what would happen if you guessed wrong and didn't
20 file the 2019 statement. Well for one thing, the rule itself
21 says you can't vote, potentially, on the plan. Well, that
22 would be unfortunate for a lot of clients. Moreover, you
23 never -- people never knew whether or not, as we saw in W.R.
24 Grace, the debtor or insurers or whoever might demand that
25 proofs of claim be filed and would you be able to file a proof

Page 91

1 of claim if you had, earlier on, filed a Rule 2002 notice and
2 you hadn't filed a 2019, would that be a potential sanction for
3 failing to file the Rule 2019.

4 So we had all this argument and the upshot of the
5 Court was that the Court rendered what I think could fairly be
6 described as sort of a compromised solution to this which was
7 yeah, you've got to go ahead and file the 2019s but you don't
8 have to file them on the public record, i.e., they're not
9 public records. And you're going to have to make a motion and
10 you're going to have to describe, on an individual basis, why
11 you need the information.

12 Now that order is not the same thing, technically, as
13 a sealing order but it has, as a practical matter, the same
14 effect, which is it's not readily available to the public. A
15 lot of Mr. Cassada's arguments about the public's right of
16 access, et cetera, sort of almost blow off the notion that this
17 is similar to if not the same as a confidentiality order. But
18 courts, and Your Honor yourself, has in many instances in
19 bankruptcy cases issued confidential -- sealing orders with
20 respect to things that, as Mr. Cassada argued in his
21 presentation, were required under the Bankruptcy Code.
22 Motions, for example, for KERPS, motions for exit financing,
23 motions for business transactions where the motion needed --
24 involved something that court approval was required for under
25 the Bankruptcy Code, but it was acknowledged by people that the

Page 92

1 underlying materials that formed the basis of the motion, some
2 or all of them might contain sensitive information, information
3 that was otherwise not required to be put on the public record
4 and so it is sealed.

5 And I would submit, Your Honor, that we're in a very
6 similar situation to that right here, which is we should
7 analyze this from the perspective of as though Garlock were
8 attempting to obtain access to sealed documents. And then
9 question comes up, if that's true, in the motion to intervene
10 Rule 2018 talks about cause. It doesn't say open sesame.

11 And what is cause to intervene? I would submit, at an
12 absolute minimum, it would be at least as restrictive as the
13 proper purpose requirement that the non-bankruptcy cases, such
14 as Pansy and the others have talked about in the Third Circuit
15 for -- and going all the way back to the Supreme Court's
16 decision in Nixon was required. And so what is the proper
17 purpose here?

18 Well, Garlock -- if Garlock gets what it's asking for
19 it's going to get a whole lot of stuff. It's not just going to
20 get a list of names. It's going to get medical information,
21 it's going to get potentially what it believes equates to
22 exposure information and it's going to be getting it in the
23 form not in which the party that sought to be -- is sought to
24 be used against generated, i.e. the claimant, it's going to be
25 getting it from the claimant's lawyer in terms of an

Page 93

1 allegation, I guess, that I represent you as a creditor and
2 therefore you have a claim and it's going to seek to then have
3 that treated as some sort of an admission by the claimant
4 through the, I don't know, de facto attorney in fact or
5 attorney at law, whatever legal rational Garlock thinks it can
6 articulate in support of that.

7 Well, how is it proper for somebody that has -- wants
8 to take information that was put under seal for a particular
9 purpose for use in a particular bankruptcy case for advising
10 the people in that bankruptcy case, who were the parties in
11 interest, who were going to be the people that were voting and
12 making claims and to take that information and attempt to use
13 it in another bankruptcy case to, in effect, impeach people on
14 the notion that because their lawyer had filed this 2019 with
15 their name on it, that that showed that some discovery response
16 that they gave in the Garlock litigation at some later point in
17 time was false.

18 That's really what this comes down to. And I -- while
19 the parties have discussed a variety of cases involving these
20 principals, I don't think there's any case that's particularly
21 closely on point in this regard. The only case, frankly, that
22 is in point is Your Honor's prior decision in the Pittsburgh
23 Corning case where you said specifically, to Garlock in respect
24 of a very similar motion, you've got to show me your need on a
25 one-by-one basis. You've got to identify the claimant that you

Page 94

1 think is lying and you've got to then tell me I want that
2 claimant's lawyer's 2019 to find out -- to help me show that
3 that claimant's lying as opposed to, well I have this
4 undifferentiated assertion that I want to make that lots of
5 people are lying out there and I'm not going to tell you who
6 they are, I just want the entire universe of 2019 forms in a
7 case so that I can paw through them and find out which ones I
8 think I might be able to craft the argument for. In other
9 words, facts in search of an argument. And I would
10 respectfully submit that the motion to intervene should be
11 denied for the same grounds, really, that the motion should be
12 denied on the merits. Thank you.

13 THE COURT: Mr. Schepacarter?

14 MR. SCHEPACARTER: Thank you, Your Honor. For the
15 record, Richard Schepacarter for the United States trustee.
16 Your Honor, our objection is not limited. I shouldn't say it's
17 limited, but it's really only to the motion for the re-opening
18 of the case and the objection is basically that if the cases
19 are re-opened that the entities, the debtors or reorganized
20 debtors, will be responsible for the payment of quarterly fees
21 under Section 1930(a)(6) and also for reporting under Rule
22 2015.

23 Counsel for Garlock indicated that there's some
24 precedent going the other way and I would assert that based on
25 the pleadings that we filed that the precedent's really that

Page 95

1 when the case is opened or the case is reopened, in any event,
2 until it's -- like the statute says, converted or dismissed,
3 that there's an obligation there to pay the quarterly fees for
4 whatever period of time that it's opened and for whatever
5 disbursements that are made during that period of time.

6 For some of these cases it'll be a minimal fee because
7 I believe, for example, Combustion Engineering doesn't operate
8 and I'm not sure who would pay that fee. For another case,
9 such as Owens Corning, I think somebody -- I don't know if it
10 was Owens or Armstrong, filed a response indicating that
11 there's five billion dollars in gross revenues. I imagine if
12 that case is open for a day or for a month that the maximum fee
13 is going to be incurred in those cases, just like what happened
14 when they had to reopen the case. These entities, Garlock,
15 somebody, had to pay the reopening fee of whatever, I think
16 it's 1,000 dollars a case, had to pay -- that fee had to be
17 paid, the statute's clear, 1930(a)(6) says in addition to that
18 fee there's another fee that's due and that's the fee that's
19 due to the U.S. Trustee's office and I think that's by statute.

20 Does Your Honor have anything else?

21 THE COURT: No.

22 MR. SCHEPACARTER: Any questions?

23 THE COURT: I tried to limit U.S. trustee fees once
24 before, the Third Circuit didn't like it much so I don't know
25 how I'm going to be able to argue with the hand slapping that I

Page 96

1 got from by the Third Circuit to try and limit these before.
2 So I guess that's a little unfair, they weren't really hand
3 slapping but nonetheless, they were pretty adamant about the
4 fact that when Congress imposes a statute that even though at
5 that point it applied to a plan that was already post-
6 confirmation and as to which all of the money was already
7 dedicated elsewhere, that they were going to have to figure out
8 how to pay the fee.

9 So they're going to do it in that kind of a
10 circumstances, I can't imagine that they're not going to say it
11 has to be paid if the case is reopened. What discretion do I
12 have.

13 MR. SCHEPACARTER: Understood, Your Honor.

14 THE COURT: What discretion do I have? Do I have some
15 discretion?

16 MR. SCHEPACARTER: With all due respect, I don't think
17 so.

18 THE COURT: Does the U.S. trustee's office have
19 discretion to waive fees?

20 MR. SCHEPACARTER: Frankly, no. That's a statute and
21 it has to be enforced and that's part of our duties, to enforce
22 the Bankruptcy Code and any bankruptcy law and the statutes and
23 the like. So, we have no discretion.

24 For example, if we wanted to say you don't have to pay
25 this fee, just make it half, we can't do that. So understood,

Page 97

1 Your Honor. Thank you.

2 THE COURT: All right. Thanks.

3 MR. RICH (TELEPHONICALLY): Your Honor, this is Jeff
4 Rich. I don't know if you can hear me, I'm representing
5 Combustion and Mid-Valley.

6 THE COURT: I can hear you, Mr. Rich. Go ahead.

7 MR. RICH: The only point we wanted to make in this is
8 that if Your Honor decides to reopen these cases, that the fees
9 should be -- the 1930 fees should be imposed on Garlock and not
10 on Mid-Valley and Combustion as obviously these cases aren't
11 being opened for any purpose having to do with the debtors as
12 much as it is for Garlock's purposes, whatever they may be.

13 THE COURT: Well what about the reports? I mean, do I
14 have the discretion to say you don't have to file the reports
15 that generate the fees?

16 MR. RICH: Well, that's an interesting question. I
17 suppose they could prepare the report and we could look at it
18 and then file it. You know, I suspect it's not going to take a
19 lot of time to file these pretty simple reports since there's
20 no operations going on. But I think that if we wind up having
21 to pay the fees, that doesn't seem to be logical in light of
22 the purposes for which Garlock wants this information.

23 THE COURT: Okay. So neither of these cases are
24 operating and so fees might be minimal and reports would be
25 pretty much and no moment, but is an operating debtor going to

Page 98

1 give Garlock access to its financial statements so that Garlock
2 can prepare the reports that generate the fees?

3 MR. RICH: That is a question which we haven't yet
4 confronted but I suspect that the clients would not want to
5 give any reports of any kind of information to Garlock,
6 although I think that in the case of Mid-Valley and Combustion
7 those statements, if they are existing at all, would be
8 minimal. I would expect someone would have to prepare them
9 since Combustion essentially, if I recall, still a landlord and
10 Mid-Valley is really not operational.

11 THE COURT: All right, Mr. Rich. Thank you.

12 MR. RICH: Thank you, Your Honor.

13 THE COURT: Anyone else on the phone wish to speak?

14 MS. DANDENEAU (TELEPHONICALLY): Your Honor, this is
15 Debra Dandeneau from Weil Gotshal & Manges on behalf of
16 Armstrong. We filed a response. I'm not going to go through
17 all the points made in our response. And frankly Armstrong is
18 agnostic about whether Garlock obtains a 2019 materials.
19 We're -- one thing that's different from the 2019 versus the
20 ballot is that, and I recognize that we're a little late to
21 this party, but it strikes me that that's the kind of thing
22 that Garlock could easily have sought with respect to discovery
23 in its own case. There was nothing in the 2019 orders that
24 prevented them from going and serving discovery on the law
25 firms and getting that same information in its own case,

Page 99

1 whereas the ballots are something that are property of the
2 debtors.

3 Now frankly, it's been almost five years since
4 Armstrong's confirmation hearing. I have no idea where the
5 ballots are. I don't know if we were required to retain them
6 for a certain period of time, but I just note that. And we did
7 raise, in our response, that this Court has to independently
8 determine that it has subject matter jurisdiction over
9 Garlock's request.

10 And I just note that Garlock went through a nice
11 little litany of all the different retention of jurisdiction
12 provisions in the various plans but that's frankly, as Your
13 Honor knows, irrelevant to the issue of whether the Court has
14 subject matter jurisdiction. It may be necessary but it's
15 certainly not sufficient. And at the end of the day, the issue
16 of subject matter jurisdiction is an issue of whether this is a
17 matter that affects the debtor, the reorganized debtor's
18 estate.

19 And in the recent case of Kaiser, the court ruled that
20 it lacked subject matter jurisdiction to preside over a
21 discovery dispute involving a trust created under the plan
22 because it did not have an affect on the debtor's estate.

23 But the one thing I -- the final thing is I certainly
24 agree with Mr. Rich, that if for some reason the Court is
25 inclined to grant access to the 2019 materials and feels that

Page 100

1 it needs to reopen the cases to do so, what I would suggest
2 certainly the reorganized debtors and Armstrong is an operating
3 entity with substantial operations, should not be exposed to
4 any liability or any cost as a result of that decision to
5 reopen.

6 What we did when we had to reopen the cases, in order
7 to approve the trust settlement with Liberty Mutual Insurance
8 Company is the very same order that opened the cases closed the
9 cases. It essentially opened the cases and then simultaneously
10 closed the cases and we did not prepare a report and we did not
11 pay U.S. Trustee fees in connection with that. So again,
12 although we find the request strange coming up in our case, we
13 certainly believe that Armstrong should not have to bear any
14 financial responsibility for this.

15 THE COURT: All right. Anyone else on the phone? I
16 guess not. Okay.

17 MR. ISENBERG: Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 MR. ISENBERG: Adam Isenberg, Saul Ewing, on behalf of
20 the Owens Corning entities, Your Honor. We did file a brief
21 response to this and as set forth in our response, we have --
22 we are indifferent on the issue as to whether Garlock should be
23 given access to these 2019 statements or whether it should not.
24 That's not our fight; we don't have a dog in that fight, Your
25 Honor.

1 We are concerned, however, with the reopening or the
2 potential reopening of the cases for the reasons that ought to
3 be obvious, Your Honor. But before I get to those let me raise
4 a couple that may not be so obvious.

5 First of all, Owens Corning was in bankruptcy for ten
6 years, it filed on October 5th, 2000. The last of the Owens
7 Corning cases was closed August 4th, 2010, just within six
8 months ago. That's a long time, Your Honor, to be in
9 bankruptcy.

10 Even before that, Your Honor, as you know because you
11 handled those cases, Owens Corning was plagued by the asbestos
12 problem for many, many, many years. So the closing, the final
13 closing, of the Owens Corning cases was actually a big deal for
14 Owens Corning in terms of closure, in terms of internal moral
15 and all of that. Reopening the cases is not helpful in those
16 respects, at all, and would be viewed detrimental internally
17 for those reasons.

18 Beyond that, Your Honor, we get into the issues that
19 we've just raised. Owens Corning is a sizeable operating
20 company, revenues, ballpark, five billion dollars a year. It's
21 also a publicly reporting company, Your Honor, so the idea that
22 was floated a few minutes ago about having Garlock look at our
23 books and records and prepare reports has to fail for a whole
24 bunch of reasons, Your Honor.

25 First of all, we can't have a third party looking at

Page 102

1 our information, from an SEC perspective. And in any event,
2 Your Honor, we have to have somebody sign operating -- post-
3 confirmation operating reports and we can't have somebody else
4 prepare it and have us sign it, Your Honor, we would not be
5 comfortable with that.

6 The SEC interplay should not be understated, Your
7 Honor, because OC cares very deeply, for obvious reasons, about
8 making sure that it doesn't overstep any regulatory bounds from
9 an SEC perspective. So filing post-confirmation operating
10 reports has that level as well, that dimension I should say, as
11 well.

12 Separate and part, of course, is the cost. OC will
13 max out; I haven't done the math exactly but would max out
14 pretty quickly if its cases were reopened. And what we have
15 here, Your Honor, is we have a dispute between folks over here
16 and folks over here. It doesn't involve OC. It doesn't
17 involve OC's operations, its case. It really doesn't involve
18 us and yet we're stuck, literally, in the middle with potential
19 costs if these cases are reopened with the administrative task.
20 And besides the sort of moral and internal issues that this
21 would cause.

22 We suggested in our pleading, but Your Honor may have
23 already de facto ruled on this, that perhaps there's a way to
24 do this -- open the cases, close the cases and declare that we
25 don't have to file any post-confirmation reports or pay any

Page 103

1 fees. I think Mr. Schepacarter has spoken on that and I think,
2 Your Honor, you spoke on that a moment ago. That would be our,
3 sort of, practical solution here if Your Honor's inclined to go
4 that way.

5 But from an OC perspective, Your Honor, we are
6 concerned by this. This does cause us harm and prejudice and
7 that is one of the factors, as we understand the case law under
8 Section 350(b) in determining whether there's cause, one of the
9 things the Court has to look at is whether there's prejudice to
10 the parties and there would be prejudice here for Owens
11 Corning.

12 THE COURT: All right. Thank you. Anyone else wish
13 to speak in opposition to the motions to intervene or for
14 access to the 2019s or to reopen? Okay. Then let's deal with
15 the exhibits. Mr. Esserman?

16 MR. ESSERMAN: Your Honor, Sandy Esserman. I would
17 also point out that of course everyone knows that Garlock is in
18 bankruptcy itself. So in position of any kind of fees or costs
19 to Garlock and their estate is, sort of -- I'm not sure that
20 Garlock is authorized or their lawyers are authorized to incur
21 any expenses out of the ordinary course of business. I guess I
22 would let them determine whether, to the extent they were
23 liable for any costs here in reopening, whether that was in the
24 ordinary course of business or not. But I would suspect that
25 this isn't some place that some of the creditors or their judge

Page 104

1 might want them to go to but that's a different --

2 THE COURT: So Garlock's -- are you just suggesting,
3 when we're talking about the consequences of reopening the U.S.
4 trustee fees or are you talking about Garlock's offer to pay
5 for the costs of obtaining whatever the 2019 information is at
6 all would have to be --

7 MR. ESSERMAN: Well, if it's a nominal amount that's
8 one thing. I'm really referring to any kind of substantial
9 costs or fees being incurred, although we don't know that in
10 fact Garlock is authorized to pay any fee to do anything other
11 than to have their lawyers appear here today, which I'm just
12 assuming that they're authorized to do and they consider this
13 ordinary course of business.

14 THE COURT: All right.

15 MR. ESSERMAN: With regard to the exhibits, we do have
16 objections. We filed written objections. Once again, I don't
17 want to repeat them here but I will summarize them very
18 briefly, to the exhibits. Our filed papers, like our
19 arguments, set forth the exhibits but we have with regard to
20 Exhibit 1, which was 2019 statements filed by certain firms --
21 which, if they were on the public record, we don't have any
22 objection to something that's on the public record. We don't
23 think that there's any need for them to be an exhibit and we do
24 think you can take judicial notice of them if they're on the
25 record.

Page 105

1 The exhibit 2, which is a summary --

2 MS. RAMSEY: Excuse me. Mr. Esserman, may I
3 interrupt?

4 MR. ESSERMAN: Yeah.

5 MS. RAMSEY: Do you want to hear from all the
6 objectors on Exhibit 1, Your Honor, or would you prefer to go
7 through the entire list per objector?

8 THE COURT: It may be easier just to deal with exhibit
9 by exhibit so I can make rulings on each one, if that's
10 agreeable.

11 MR. ESSERMAN: Okay. Why don't we do that?

12 MS. RAMSEY: May I address the Court from here, Your
13 Honor?

14 THE COURT: Yes.

15 MR. LOCKWOOD: One procedural question, Your Honor,
16 related to your earlier statement about the agenda binder and
17 everything. Pittsburgh Corning filed an objection to certain
18 exhibits that doesn't appear on the agenda. I don't know
19 whether PC has counsel on the phone here today or not. Since
20 I'm representing the PC committee, at a minimum, I thought I
21 should make sure that Your Honor is aware that there is such an
22 objection and hopefully has a copy of it before --

23 THE COURT: Do you have the docket number, by any
24 chance?

25 MR. LOCKWOOD: It appears to be docket number 8196.

1 THE COURT: All right. I haven't seen it, Mr.
2 Lockwood but I will. Thank you.

3 MR. LOCKWOOD: Sorry, Ms. Ramsey.

4 MR. ESSERMAN: Let's go exhibit by exhibit and let me
5 give a quick summary, then, of all the objections we've raised.

6 As to the open cases, if it's on a public record, we
7 don't have a problem. If the case has been closed on a 2019,
8 obviously, until those cases have been opened we do have -- we
9 would have an objection. We don't think the statements filed
10 in the closed cases are relevant or calculated to lead to
11 discovery of admissible evidence as the cases are closed and
12 the Rule 2019 is going to the case administration. That's, in
13 summary, what we've said in our written papers.

14 THE COURT: All right. Ms. Ramsey?

15 MS. RAMSEY: Your Honor, we likewise object to the
16 exhibits to the extent that they have been offered in the
17 closed cases. We also object to the extent that they are
18 proposed to be exhibits in what has been a non-evidentiary
19 hearing.

20 With respect to the 2019s that were filed in the open
21 cases, we do not object to their consideration in the
22 particular case in which they were filed. But we do object to
23 the relevance in any other case as to which Garlock has filed a
24 motion for access.

25 We also object, Your Honor, to the Rule 2019 statement

Page 107

1 that was attached as purportedly filed by the law firm Stanley
2 Mandel in the W.R. Grace case because it appears to be an
3 incomplete copy.

4 THE COURT: Can you tell me what exhibit that is?

5 MS. RAMSEY: It is part of Exhibit 1, Your Honor. I
6 don't believe that there's a separate designation for that
7 2019.

8 THE COURT: Anyone else with respect to Exhibit 1?

9 MR. LOCKWOOD: Your Honor, the committees did not file
10 separate sets of objections to these. I would just, in order
11 to save time, say that we join in the objections of Messieurs
12 Esserman -- Mr. Esserman and Ms. Ramsey.

13 THE COURT: All right. Mr. Worf, are you responding
14 to exhibit objections?

15 MR. WORF: I'd be happy to, Your Honor.

16 THE COURT: All right.

17 MR. WORF: How ever these come in, we're indifferent
18 to how they come in, whether by judicial notice or as evidence
19 that we've offered. But they should come in one of those two
20 ways. These are 2019 statements that were filed by firms that
21 have objected to Garlock's motion, as Mr. Cassada explained.
22 It's relevant what they say, that's a significant issue that we
23 have relied on in our argument, do they say what they say and
24 we've, I think, been over that and why it's relevant to our
25 motion.

Page 108

1 THE COURT: Okay. So the objection to part of Exhibit
2 1 with respect to W.R. Grace that it's not a complete copy, was
3 this filed on the public record?

4 MR. WORF: Yes, Your Honor. And if that's an
5 incomplete copy that was unintentional and I believe the Court
6 can take judicial notice of whatever the complete copy is of
7 the docket, or perhaps it was incomplete when filed, I just
8 don't know. But we put in what we pulled from the docket.

9 THE COURT: I'm sorry. You put in what you pulled --

10 MR. WORF: What we pulled off of the docket in W.R.
11 Grace.

12 MR. ESSERMAN: Yes. I think the statements that
13 they've referenced were filed on the public record. The
14 exhibits that go with the statements are what's under seal or
15 what's subject to a restrictive order.

16 THE COURT: Okay. Well, with respect to open cases,
17 documents that were pulled off the docket, I will take judicial
18 notice of those statements. That is not a determination of
19 relevance, I'll simply take judicial notice of the fact that
20 they were filed and that they are part of the public record. I
21 think I can do that without a problem.

22 With respect to relevance, I'm not sure what the
23 relevance is with respect to this motion because these are
24 different 2019 statements and I don't think it's a foregone
25 conclusion that because a particular 2019 statement says A, B,

Page 109

1 C that every 2019 statement will say A, B, C. But clearly
2 these statements do say what they purport to say and I will
3 take judicial notice of those.

4 So if you can identify which exhibits in your list
5 were from open cases in which documents were pulled off the
6 public record, I will take judicial notice of those.

7 As to closed cases, to the extent that the exhibits
8 were pulled off the public docket, again I will take judicial
9 notice of those because even though the cases are closed, the
10 dockets are there and it seems to me that to the extent that
11 you get a document from a docket that still exists, it's
12 appropriate for the Court to take judicial notice. So I will
13 do so if you can give me a list of which exhibits those are.

14 MR. WORF: Okay. Thank you. Your Honor, can we ask
15 more generally just for judicial notice of all 2019 statements
16 that were filed in the twelve cases? That might be the
17 cleanest way to do it and -- because our point is that they say
18 what they say and, you know, we tried to provide these as
19 illustrations, a sample. You know, we didn't think it was --

20 THE COURT: I don't understand. I mean, I can take
21 judicial notice of the pleadings that are filed in the court
22 record. So to the extent there's a docket entry that says
23 there's a 2019 statement, I can take judicial notice of that
24 fact. But I don't think that gets to the sealing, unsealing
25 issue because I sealed these documents for a reason and that is

Page 110

1 because I think the individuals have come forth with
2 information that is very private and sensitive and need not be
3 disclosed absent compelling need.

4 In addition, I am not convinced, at this point in
5 time, that there isn't commercial privacy information involved
6 by the identification of the firms of their client base and in
7 some instances their agreements with their clients, which is
8 part of the exemplars in some cases and agreements that they
9 may have with codefendant law firms which has no bearing on
10 anything that Garlock is even purporting to ask for at this
11 point in time.

12 So I'm concerned about the privacy and the commercial
13 impact in the 2019 statements. To the extent that they're
14 filed, they're filed and I don't have any problem taking
15 judicial notice of the fact that they're filed. But I don't
16 know that that advances what you're trying to --

17 MR. WORF: Okay. Yeah, just to be clear for making
18 our record, will the Court take judicial notice of all the 2019
19 statements that have been filed in the twelve cases?

20 THE COURT: Well, I will but you're going to have to
21 tell me what it is that they are. I mean, I'm willing to take
22 judicial notice of documents that are on my docket, if that's
23 what you're asking me to do. Yes, I can do it. But I can't
24 sit here and tell you that in all these twelve cases, you know,
25 docket entry number 4659 is a 2019 statement of, you know, Ms.

Page 111

1 Ramsey's law firm. I can't do that. I don't have that kind of
2 recall of these 2019 statements and there are hundreds of them,
3 if not thousands, that are filed. So, yes, I will do it but --

4 MR. WORF: I just want to make sure for our record
5 that we have the statements as part of the record because it is
6 important.

7 THE COURT: You don't have them as --

8 MR. WORF: And just to make sure that that's in the
9 record and to have the Court take judicial notice of that.

10 THE COURT: I'll take judicial notice of the fact that
11 2019 statements have been filed by the various entities that
12 have filed them, that they say whatever they purport to say.
13 That is not a determination that the information contained
14 therein is correct or accurate, that's not the purpose of
15 judicial notice. But I will take judicial notice of the filing
16 of those statements to the extent they're filed of record in
17 bankruptcy cases that are on my docket.

18 MR. WORF: Okay. And of the contents of the
19 statements, whatever they may say. Not that they -- not a
20 finding that they say what they say but that they are on the
21 docket and that they have the content that they have.

22 THE COURT: Sure. They have the content that they
23 have, whatever that content is, they have it.

24 MR. WORF: Okay.

25 THE COURT: But that is not a determination that it's

Page 112

1 (a) truthful; or (b) a lie; or (c) anything other than the fact
2 that it has information in it and whatever the information is
3 that's what it is.

4 MR. WORF: Okay. Thank you, Your Honor.

5 THE COURT: Okay. But back to your exhibits because
6 those aren't exhibits -- so I'm not sure what I'm taking
7 judicial notice of the 2019s for because they're not offered as
8 part of the exhibits for any reason. I thought you were
9 offering exhibits to illustrate your argument as to what
10 information you thought would be in them. So now I'm confused
11 about what you're asking me to do because the 2019s aren't
12 exhibits here and I'm not making them exhibits here. That's
13 not my function.

14 MR. WORF: Well, I think if we go to number 2, and I
15 know the objectors haven't addressed it yet, Exhibit 2 is a
16 summary of certain statements in certain 2019 statements that
17 were filed on the docket. And we offered that as a summary for
18 the Court's use of what are admittedly voluminous documents,
19 which we think are illustrative and helpful to the Court. And
20 that's why we offered that as an exhibit.

21 As to number 1, which are the actual examples, I think
22 we can treat those as -- just like Exhibit 2, as essentially a
23 summary of voluminous information that the Court has now taken
24 judicial notice of, which is the content of the statements on
25 the docket.

1 THE COURT: No. Exhibit 1 isn't the summary. Exhibit
2 1 are examples of 2019 statements that have been filed in
3 various cases and I don't recall offhand, from that exhibit,
4 whether all of them were on my docket or not, I just don't
5 recall.

6 MR. WORF: All the ones in that are. These are the
7 ones that we drew for the objecting law firms in these twelve
8 cases.

9 THE COURT: Okay. All right. Then they're not
10 summaries though, they're copies, as I understand it, of what
11 you got off the docket as the 2019 statements. So I can take
12 judicial notice of what's in Exhibit 1. To the extent an
13 exhibit isn't complete, I'll take judicial notice of the entire
14 exhibit but somebody -- if you're concerned about what has been
15 printed as a summary, should supplement to make sure that the
16 exhibit is complete. I don't have recollection of whether any
17 specific exhibit is or isn't complete.

18 So I'll take judicial notice of Exhibit 1 but not as a
19 summary; that's not what it is.

20 MR. WORF: And I think that's sufficient, Your Honor.
21 Once the Court has taken judicial notice of what had been filed
22 in the cases that allows us to refer to them, and that is
23 sufficient.

24 MR. ESSERMAN: Your Honor, Exhibit 2 is a summary
25 prepared by Garlock and we do object to that summary because

Page 114

1 it's a selected -- it's some alleged selected statements from
2 some of the 2019s. If you're going to look at the 2019s you've
3 got the full 2019 to look at not an incomplete -- what really
4 is an incomplete and unhelpful summary. So we would -- we do
5 object to that Exhibit 2, which is a summary of statements made
6 in Exhibit 1 as it only purports to represent a portion of the
7 2019 statements. It's not useful and the 2019s that are filed
8 on the docket speak for themselves without the selected
9 excerpting undertaken by Garlock.

10 THE COURT: Well, I agree with respect to Exhibit 2.
11 It appears to be a summary of Exhibit 1 and I've taken judicial
12 notice of Exhibit 1, so I don't know what I need the summary
13 for to the extent that it is somebody else's interpretation of
14 the information or -- interpretation's not the right word --
15 condensation of the information that's in Exhibit 1. So I'm
16 not sure of the purpose of Exhibit 2.

17 MR. WORF: I don't know if anyone else wants to
18 address this but there's no indication that anything on this
19 exhibit is inaccurate in any way. They haven't mentioned it
20 and I think it's a proper summary of documents that are
21 admittedly voluminous and is therefore proper.

22 THE COURT: I'm going to sustain the objection to
23 Exhibit 2. I guess, you know, it's the beauty is in the eye of
24 the beholder issue, whether something is or isn't helpful.
25 Since I'm taking judicial notice of Exhibit 1 and you've

Page 115

1 printed Exhibit 1 and I've accepted Exhibit 1, I don't need
2 Exhibit 2. So I will take Exhibit 1 and sustain the objection
3 to Exhibit 2. So Exhibit 1, I take judicial notice of.
4 Exhibit 2, the objection is sustained.

5 MR. ESSERMAN: Okay. Exhibit 3 are 2019 statements
6 filed by Kazan McClain, Brayton Purcell and Waters & Kraus in a
7 couple bankruptcy cases pending in California. We object to
8 these -- Exhibit 3 on the basis of, number one, lack of
9 foundation. These documents appear to have been filed in two
10 different cases, the plant insulation and thorpe insulation; we
11 don't believe they're relevant nor calculated to lead to
12 discovery of admissible evidence.

13 For -- we also object on 403 grounds, any probative
14 value is outweighed by the danger of unfair prejudice,
15 confusion, the issues of consideration, undue delay, waste of
16 time, needless presentation of cumulative evidence.
17 Furthermore, the 2019s, as we've discussed many, many times are
18 fashioned by Courts, different courts fashion different 2019
19 orders. What someone may do in response to some other court's
20 requirements or requests is not -- it may be interesting but
21 frankly this Court has set the standard for 2019 and the --
22 what's been filed in other courts we don't think is of any
23 probative value for Garlock.

24 THE COURT: All right. Well, with respect to this
25 one, if these are exhibits that were filed in another

Page 116

1 bankruptcy case is there some reason I shouldn't just take
2 judicial notice of these? I'm not sure of the relevance,
3 frankly, but nonetheless to the extent that they're out there
4 and they're on the public record in a bankruptcy case, it seems
5 to me that I can take judicial notice of those.

6 MR. ESSERMAN: I understand that, Your Honor, but we
7 have to make the relevance objection now or there's an
8 argument, anyway, that we've waived it. So we have made that
9 relevance argument.

10 THE COURT: All right. Well, I'm not sure what the
11 purpose of these is. Mr. Worf?

12 MR. WORF: Well, the relevance of these, Your Honor,
13 is these are statements that were actually filed by two firms
14 that have showed up and objected here. They were filed not
15 just on the docket and in those courts, they were filed on the
16 electronic docket in those courts and they are statements that
17 contain the full exhibit to the statement with the names of the
18 claimants, their alleged disease and other information. I
19 think in one case it also includes the claimants' home
20 addresses. And the purpose of this is to show that it's just
21 not possible to reach the showing the Third Circuit requires of
22 a clearly defined and serious injury. And that the information
23 on these exhibits is of the kind that the Court will protest
24 when in another court they have been filed on the public
25 docket, on the electronic docket, by these same firms and

Page 117

1 there's no showing that anything untoward has happened. And
2 for that reason Garlock's access to these exhibits cannot be
3 improper in any way.

4 MS. RAMSEY: Your Honor, may I respond?

5 THE COURT: Yes.

6 MS. RAMSEY: In addition to adopting all of the
7 objections that Mr. Esserman raised, this is context specific
8 and without a copy of the court's 2019 orders in those
9 proceedings and without an understanding of the directions that
10 were made by the Court to counsel with respect to what
11 information was to be contained on those 2019 statements, it is
12 impossible to evaluate the similarity or lack of similarity or
13 the arguments that have been raised for or against with respect
14 to these 2019s.

15 And while the Court can take judicial notice, our
16 position continues to be that not only are they irrelevant but
17 they are potentially -- the potential for prejudice and undue
18 prejudice without a complete record and without the foundation
19 does counter against that and weigh to excluding these on this
20 record.

21 MR. WORF: I think if Your Honor would look at the --
22 we also included the text of the actual cover page or the
23 statement, if you want to call it that, and the language is
24 quite similar to the statements that have been filed with this
25 Court. Garlock was not a party to these cases, it does not

Page 118

1 know what the debate concerning the 2019 statements was in that
2 case and I don't think that's necessary to know.

3 They say -- like the statements in this case, they say
4 what they say. They were intended to comply with the rule and
5 they list all the names of the claimants and their addresses
6 and everything else and they're filed electronically.

7 THE COURT: Well, to the extent that in another
8 circuit a court has determined that information may not be --
9 I'm not sure what the right word is, private, protectable, I
10 don't know because I don't know what the language of the court
11 was in making this ruling. I don't think means that that is
12 something that this court is found to do. It seems to me that
13 there is private information in the nature of the disease. I
14 don't think the names of the entities are necessarily private
15 but they may be private as commercial information with respect
16 to any particular law firm, that's a different issue.

17 Who is filing claims, I think is not private
18 information. That's why I think you're entitled to the
19 ballots. Those people have voted and asserted a claim, but
20 they have not done anything with respect to the 2019 statement,
21 it's the law firms that filed them and I am concerned about
22 that fact.

23 I don't really see the relevance to what's happened in
24 another proceeding with respect to these 2019s. If you're
25 offering them as something illustrative, I will -- I can accept

Page 119

1 them as illustrative exhibits. I can take judicial notice of
2 the fact that they were filed but I don't see the relevance
3 directly to the issue at hand. So I'm willing to take a look
4 at them as illustrative of what some courts have required in
5 the way of 2019 statements and what the firms did to comply.
6 I'm willing to do that but I don't see the relevance to this
7 particular motion to reopen that isn't related to those cases,
8 and those 2019 cases aren't filed in the cases you're seeking
9 to reopen.

10 With respect to the request for access, as I said,
11 I'll take them as illustrative of what some 2019 statements say
12 but not as a given that that's what the 2019 statements that
13 you're looking for would say.

14 MR. ESSERMAN: Further, Your Honor, I would point out
15 that I'm not so sure how illustrative or probative they are of
16 anything because of the 2019 statements. Two is the address of
17 the law firm, is the address of the client and one lists -- one
18 appears that it could list, potentially, the names of the
19 individual claimants. So it's unclear what the Court was
20 requiring as to addressing, whether it was the claimant's
21 address or the law firm's address. So, you know, to me that
22 just heaps on confusion rather than clarity.

23 MR. WORF: I would note, Your Honor, that they all
24 list the alleged diagnosis and that is available
25 electronically. Garlock pulled it off the electronic document.

Page 120

1 THE COURT: Yeah. I don't have any doubt that they
2 list what they purport to list, Mr. Worf. That's not the
3 issue. The issue is what's the relevance to the motions that
4 are pending before me, and it seems to me you're making a case
5 for why you need this particular information. You're not
6 really making a case for why you need it, I shouldn't state
7 that. You're making a case for the fact that you're a member
8 of the public and therefore you're entitled to it and that
9 seems to be the whole sum and substance of it. My question
10 was, what do you want to use it for and the answer to that
11 question seems to be that you want to use it for litigation
12 purposes.

13 That puts me back into the order that I issued, which
14 is then tell me specifically who you're alleging is making a
15 false statement somewhere. And then I can understand in
16 connection with that entity or that law firm, whichever it
17 happens to be, that you may need access to a particular
18 statement in the course of that litigation. But I don't think
19 the 2019s are there just for fishing expeditions for private
20 litigants and that's what I get the semblance that this is,
21 that you're putting this under the gloss of public access but
22 that really isn't what this is. You're not trying to
23 disseminate this information to the general public for any
24 purpose; you're using it in a private case. And I think the
25 private discovery rules are the applicable rules, not a

Page 121

1 question where you're saying as a member of the public I have a
2 right to access to determine whether or not -- I'm not sure
3 what, that the judicial process is cleaned out, I don't think
4 that's it because the court doesn't do anything with this
5 information unless somebody makes a motion that says that a
6 particular law firm didn't have the authority to represent a
7 particular plaintiff. And if that were the case and that
8 motion were made, certainly, I think, at that point there would
9 be some public interest but there is no such allegation, there
10 is no such motion and that's the only purpose for the 2019
11 statement.

12 So I think there's a mix of information and matters
13 going on that is really not directly related to public interest
14 and really is related to private litigation. And although the
15 circuit has made some statements that say that private
16 litigants are entitled to access and the standards for making a
17 determination as to whether a document should be accessible,
18 are not conclusively determined by whether you're a member of
19 the public or not. If you're a member of a private entity, not
20 a public entity, the circuit does say, in some cases, that the
21 purpose for which you're seeking the information is relevant
22 and that's my concern. It seems to me that you're looking at
23 it for reasons that are related to Garlock's litigation
24 strategy and not for dissemination to the public. But I need
25 to think about this some more after I see it.

Page 122

1 With respect to this specific exhibit, though, that is
2 all relevant to whether or not this exhibit has anything to do
3 with the motions that you filed and I don't see the relevance
4 to it, except as a sample of what some 2019 statement, filed
5 somewhere else, may say. And I will take judicial notice of
6 it, as filed, for the purpose of showing that, in another case,
7 a 2019 statement was put on the public record and this is what
8 it said. And so I will admit it for that limited purpose, as
9 illustrative, that's all. Okay.

10 (Exhibit 3, 2019 statements filed by Kazan McClain, Brayton
11 Purcell and Waters & Kraus in the Plant Insulation and Thorpe
12 Insulation cases, was hereby received into evidence for the
13 limited purpose of being illustrative as of this date.)

14 MR. ESSERMAN: Exhibit 4 was an excerpt of five of
15 37,194 pages from the Federal Election Commission Report for
16 Obama for America showing individual donors with addresses. We
17 would object to this purported evidence. Besides
18 authentication issues, which is it was not authenticated, is
19 neither relevant nor calculated to lead to discovery of
20 admissible evidence.

21 It was filed by -- for very different purposes under a
22 federal mandate. It's probative of nothing other than these
23 people are donors to the Obama campaign and that they've
24 complied with applicable law or the Obama campaign has applied
25 with applicable law and has filed what Congress has set forth

Page 123

1 that they need to do. Even if it's got some attenuated
2 relevance, we think it's inadmissible, once again, under 403
3 Federal Rules of Evidence, that any probative value is
4 substantially outweighed by the danger of unfair prejudice,
5 confusion of the issues, waste of time, needless presentation
6 of cumulative evidence and relevance.

7 THE COURT: Mr. Worf?

8 MS. RAMSEY: Your Honor, may I just put on the record
9 just that we join in that objection --

10 THE COURT: Ms. Ramsey --

11 MS. RAMSEY: -- just for the record.

12 THE COURT: -- I don't see where joining in the
13 objections if that's acceptable --

14 MS. RAMSEY: That's acceptable, Your Honor.

15 THE COURT: -- or otherwise.

16 MS. RAMSEY: Thank you very much.

17 MR. ESSERMAN: And Mr. Lockwood also.

18 THE COURT: Well, he's already said he does.

19 MR. ESSERMAN: Yes.

20 THE COURT: Mr. Worf?

21 MR. WORF: First of all, on the authentication point,
22 there's no reasonable dispute that this is what it says it is.
23 It is on the Internet and it's a publicly filed document.

24 THE COURT: Well, what does it have to do with 2019
25 statements?

Page 124

1 MR. WORF: Well, on the relevance point, I would urge
2 the Court to again look at the Goldstein case from the Third
3 Circuit and one of the prongs for the finding a Court must make
4 in order to seal documents and prevent a member of the public
5 from having access, is that information is of the kind that is
6 protected by courts. And this argument applies also to the
7 exhibits we were discussing under Exhibit 3 of the 2019
8 exhibits filed publicly in the Plant and Thorpe cases where
9 this kind of information is not of a kind that is protected by
10 courts. Same argument applies here. These are individuals and
11 their addresses are disclosed here as required by the law just
12 like Rule 2019 requires creditors' addresses to be disclosed
13 and this Court required their addresses to be disclosed. And
14 that is not the kind of information that would be sealed by a
15 Court.

16 THE COURT: All right. I don't see the relevance
17 to -- court to report in any way as connected with 2019
18 statements. It's an entirely different statute for different
19 purpose. And the fact that someone voluntarily makes a
20 donation understanding that by doing so it's name and address
21 is going to be put on a report that will be filed publicly I
22 think is entirely different for the purpose of 2019. I just
23 don't see the relevance. Exhibit 4, the objection is
24 sustained.

25 MR. ESSERMAN: This similar -- we've got an objection

Page 125

1 to Exhibit 5 which is an individual Chapter 13 petition of
2 William F. Smith which was filed on February 4th, 2011 in
3 Delaware. It's from this district. It may even be pending
4 before this Court; I don't know. And it's his voluntary
5 Chapter 13 petition. We have similar objections as we just
6 made for the Federal Election Commission.

7 THE COURT: Yes. Mr. Esserman, honestly, I don't
8 see -- I have the same ruling with respect to this. This is a
9 voluntary filing by a person who's required to put this
10 information on the public record and it's just not equivalent
11 to a 2019 statement. So, yes, I don't know whose case it is.
12 As far as I know, it's not assigned to me. I've never had any
13 proceedings in it that I know of. So, I don't believe it's a
14 case assigned to me. But even if it were, I can take judicial
15 notice of the fact that the petition's there and that it
16 contains what it contains but it has nothing to do with 2019
17 statements. So, I just don't see the relevance. Mr. Worf.

18 MR. WORF: Well, Your Honor, this is an example of how
19 parties do bankruptcy cases. Here it's a debtor are required
20 when the law requires disclosure to put this information on the
21 public docket and for people to have access to again
22 demonstrating that it's -- this is not the kind of information
23 that court's protect. And --

24 THE COURT: I agree that the name and address of the
25 debtor who voluntarily files a Chapter 13 is not the kind of

Page 126

1 information that the court protects generally. I have seen in
2 some instances information sealed for various reasons but
3 generally speaking that is not protectable information. You
4 know by filing a petition in bankruptcy just like you know by
5 filing a complaint in state court that certain information is
6 going to be required to be disclosed. That has nothing to do
7 with what information appears by a law firm submitting a list
8 of clients in a 2019 statement. So, the objection is
9 sustained. It's simply not relevant.

10 MR. ESSERMAN: The next exhibit is of similar
11 objection. It's an 869-page extract from the claims register
12 in Judge Walrath's case In re American Business Financial
13 Services showing the names and addresses of thousands of
14 individual creditors on the claims register. We don't -- same
15 objection that I just made. We just don't see that this has
16 anything to do with 2019.

17 THE COURT: Well, I'm sort of in the same position
18 with this one, Mr. Worf. This is a proof of claim register.

19 MR. WORF: I -- yes, and here, I mean, this one is
20 even closer to the situation we have here because here we have
21 creditors. Individuals who are identical for purposes of this
22 motion to the creditors listed on the 2019 statements.

23 THE COURT: In American Business Financial Creditors
24 people who have claims against a financial entity are the same
25 as individual tort claimants?

Page 127

1 MR. WORF: In the relevance sense they're creditors in
2 a case and the names of creditors in a case are not the kind of
3 information that is protected --

4 THE COURT: I agree --

5 MR. WORF: -- by courts.

6 THE COURT: -- if they were creditors in the case.

7 That's why you can get the ballots but they are not creditors
8 in the 2019 statement. They are a list of clients that law
9 firms represent that may or may not, it turns out, have claims
10 in the case.

11 That this extract is simply not relevant to 2019. It
12 is what it is. The law requires certain disclosure. I don't
13 have any doubt about that. I don't have any doubt about what
14 2019 requires. The issue is whether or not in the particular
15 circumstances of the filing of the pleading and fault, there is
16 reason to keep it out of the public scrutiny. That's the
17 issue. Not whether generally speaking information is available
18 to the public. So, the relevance of this document to what
19 you're trying to do is just not there. So, I sustain the
20 objection of Exhibit 6.

21 MR. ESSERMAN: Okay. Exhibit 7 is a news article
22 describing the American Business Financial Services bankruptcy
23 noting that many of the investors required to file proofs of
24 claim reflected in Exhibit 6 were elderly, that's the exhibit
25 we just discussed. We have the same objection to that. In

Page 128

1 addition, it's hearsay, it's lack of proper foundation, it's
2 being asked to be admitted as evidence here. We don't think
3 it's evidence of anything. It's an extract of a newspaper
4 article and we just don't see the relevance. We have 403
5 arguments.

6 THE COURT: Mr. Worf?

7 MR. WORF: Again, Your Honor, this was offered to show
8 the nature of the creditors in the American Business Financial
9 case for which we offer the claims register. There was an
10 argument made by the other side that the reason why the names
11 of creditors in these twelve cases are protected when they
12 ordinarily are not is because they are in their words "elderly
13 and potentially vulnerable." This is to rebut that. The
14 newspaper article says that many of the claimants in this
15 bankruptcy case were also elderly and then we provided the
16 extract from the claims register showing the thousands of
17 creditors whose names were on the public document.

18 THE COURT: This is clearly hearsay. I don't know who
19 the newspaper person who wrote the article is or what relevance
20 he has to the case or what access to information he had. A
21 news article is probably one of the most unreliable methods of
22 establishing the truth of the matter asserted in this
23 particular type of contract -- text. And I'm sorry if there
24 are newspaper people here. I'm not attempting to cast
25 aspersions on you. I'm simply saying that as a matter of

Page 129

1 evidence, it takes a percipient witness and newscasters are not
2 percipient witnesses in most instances. That's all. I'm not
3 attacking credibility of the press in any way. So, from what I
4 know, this is not authenticated. It is not shown to be by a
5 percipient witness and the objection is sustained.

6 MR. ESSERMAN: I think it's probably double hearsay.
7 But anyway, moving onto Exhibit 8, it's a list of pending cases
8 in the Mardoc proceeding showing the names of certain asbestos
9 claimants. We have objection that there is no foundation for
10 it. It wasn't authenticated. It's not relevant or calculated
11 to lead to discovery of admissible evidence. No suggestion
12 between the commonality between a Mardoc proceeding which is a
13 federal lawsuit. In this case, it's very different situations
14 where people have actually filed claims versus a 2019
15 statement. Actually, this is a purported list of -- of names
16 of people that have filed the claims, that's all, if you look
17 at it. It's just a name, the district they filed in, the case
18 number and something called EDPA Colon, I'm not sure what that
19 means. I've never seen that before. But we don't think this
20 is probative of anything. We have the same 403 objections.

21 THE COURT: Mr. Worf?

22 MR. WORF: Again, Your Honor, I believe the Court
23 could take judicial notice of this document. This is simply a
24 list of the pending cases in the Federal Maritime Asbestos MDL.
25 This one happened to be obtained from the Internet.

1 Again, this shows that asbestos claimants are not
2 permitted to file claims or participating cases anonymously or
3 pseudonymously. Here are their names. They're publically
4 available. It again shows that the information contained in
5 the 2019 exhibits is not the kind that a Court will protect.
6 And it's relevant for that reason.

7 On the voluntariness point, this is a point that we
8 hear and we've heard Your Honor on this, the distinction is
9 that these are individuals who filed claims and that the
10 persons who appear on the 2019 exhibits did not do so
11 voluntarily.

12 The evidence in the record, we believe, does not
13 support the involuntariness of those claimants appearing on
14 those exhibits. The text of the 2019 statements says that the
15 attorney who files a statement represents the individuals on
16 the exhibit and that the individuals on the exhibit have
17 authorized the law firm to participate in the case on their
18 behalf. And the statement attaches an exemplar to which we
19 have not had access because it was filed off the electronic
20 document showing the exact terms of that representation.

21 Now, it would certainly be helpful to see that
22 exemplar and to see the terms of the representation. But the
23 other side has not offered, as they could have, an example of
24 such exemplars showing that the persons listed on those
25 exhibits had some sort of reservation not authorizing the

Page 131

1 attorney to file the statements and put their name on the
2 ballot as a person they were representing in that case. So, we
3 are a little bit puzzled, Your Honor, by the assertion of a
4 lack of voluntariness.

5 THE COURT: The voluntariness I was speaking about
6 was, I think, a different issue, Mr. Worf. I hope I didn't
7 confuse things. I was speaking about the distinction between
8 the debtor who submits to the jurisdiction of the court for
9 purposes of obtaining bankruptcy relief and a client of a law
10 firm whose name appears on the list because the law firm is
11 required by Rule 2019 to file that list of creditors. Did the
12 law firm file it voluntarily? Yes, absolutely. And does it
13 purport to say that they have duly represented clients? Yes.
14 That's the whole purpose of 2019. But there's a distinction
15 between the law firm filing it because the statute tells them
16 to and the client whose name appears on that list which may or
17 may not even know their names are on the list. But I don't
18 think the purpose is the same. That's all. I'm -- I feel
19 you're looking at me like I've got three heads so I guess I'm
20 not articulating this very well.

21 MR. WORF: I didn't mean to do that, Your Honor,
22 but --

23 MR. ESSERMAN: Makes sense to me.

24 MR. WORF: The -- I guess our point is that the law
25 firm they're in the case, they -- an obligation to file the

1 2019 statement accrues for whatever reason. They're in the
2 case doing something and they're doing it on behalf of these
3 individuals who the statement says are creditors. So, we see
4 it as indistinguishable from a creditor who's filing a proof of
5 claim or voting a ballot or any other participation in the case
6 and our exhibits of which, you know, we've mentioned in some
7 detail show the creditors are -- their names are not kept
8 confidential.

9 MR. LOCKWOOD: Your Honor, I'm going to break my
10 promise not to speak. The representation that is described in
11 the Rule 2019 that Mr. Worf referred to was authorized to
12 represent them in the case. As we've discussed earlier, that
13 doesn't say represent them in the case when. It's an authorize
14 to represent them in the case when it comes times to file a
15 ballot in the future, an authorization to represent them in the
16 case when it comes time to file a proof claim in the future.
17 It certainly isn't talking about authorizing them to file a
18 2019 statement because that's circular. And there's -- so, it
19 just -- asking -- allowing a lawyer, for example, to file a
20 Rule 2002 notice so he can get information about the bankruptcy
21 because you're status as a claimant might be effected by what's
22 going on in the bankruptcy or might not, is not the same thing
23 as filing a proof of claim. And I think that's where you're
24 correct in responding to Mr. Worf about the difference between
25 representation and a proof of claim or a ballot.

1 THE COURT: Well, this Rule 2019 starts off, if I can
2 get to the relevant part, "Every entity or committee
3 representing more than one creditor or equity security
4 holder" -- blah, blah, blah -- "shall file a verified
5 statement." It is not a requirement that a client file a
6 verified statement. It's a requirement that the lawyer do it.
7 So, the lawyer may very well have the authority to represent
8 the creditors who are listed but that doesn't mean it's a
9 voluntary filing by the creditor. It's a voluntary filing by
10 the lawyer who's appearing on behalf of certain entities in the
11 case. That's the distinction I'm trying to make.

12 In any event, I'm not sure that it's really a material
13 distinction at this point because the law requires certain
14 actions to be undertaken and they've been undertaken. I don't
15 think there's any doubt about the fact that they've been
16 undertaken. That's why we're even here arguing about this.
17 So, I think it may be a distinction without much of a
18 difference. I'm trying to get to the relevance of the other
19 information other than the 2019s that you're submitting. And
20 that's the context in which I'm trying to bring up these
21 differences.

22 With respect to lists of claims of asbestos creditors,
23 I don't know what this Mardoc document is. I don't even know
24 where it's filed or what it purports to do. So, the objection
25 to the fact that this is not authenticated and that there is no

Page 134

1 commonality between a Maritime -- Federal Maritime suit even
2 though it may have asbestos creditors in it and this type of a
3 bankruptcy proceeding is sustained. I just don't see the
4 relevance. I see the relevance to eds (ph.) and bars of 2019
5 statements that you say that you want to get.

6 To the extent that the issue is that people comply
7 with the law and at certain times the law requires the names
8 and addresses to be filed, I recognize that. I don't need
9 exhibits to tell me that. I agree.

10 MR. WORF: Could we ask Your Honor to take judicial
11 notice of the fact that asbestos claims are customarily filed
12 in public?

13 THE COURT: No. I don't agree that they are. In
14 fact, I think they're customarily not filed at all in the
15 bankruptcy cases.

16 MR. WORF: I should have clarified. In the state tort
17 system. That's where this is filed.

18 THE COURT: If somebody has filed a complaint, a
19 verified complaint, and the state tort system is the complaint
20 of record, yes, I agree. The complaints of record if
21 somebody's filed a verified complaint in the state tort system
22 but that doesn't -- that doesn't get you anywhere because the
23 content of the complaint doesn't necessarily have the
24 information that a 2019 statement would have. It may have it
25 but it doesn't necessarily. But yes, I agree. If you file a

Page 135

1 complaint, you filed a complaint.

2 MR. WORF: And we'll get to that. We have a complaint
3 and it's in evidence and we'll get to that.

4 THE COURT: All right. The objection to Exhibit 8 is
5 sustained.

6 MR. ESSERMAN: Okay. Similar we've got a similar
7 objection to Exhibit 9 which is a list of pending cases in a
8 Texas MDL allegedly showing thousands of names of asbestos
9 personal injury claimants. I'm not sure where this came from.
10 It gives the case number. It gives the style plaintiff. It
11 gives a style defendant. The one page I've got just lists one
12 defendant, I suspect it's inaccurate. I suspect that there's
13 several defendants but I don't know. I'm not sure what this
14 does. It's the same objection. We got authentication,
15 foundation, 403 relevance, probative value, not calculated,
16 admissible evidence, same reasons as Exhibit A.

17 THE COURT: Okay. Mr. Worf?

18 MR. WORF: Again, I think there's no reasonable
19 dispute that this is what it says it is which is a summary of
20 the cases in the Texas MDL.

21 The -- I guess the point of these aggregate listings
22 of numbers of asbestos cases, many asbestos cases, are probably
23 thousands on this list, although I have not counted them, but
24 there's been an allegation made on the other side that the
25 special harm that would be caused by disclosure of the exhibits

Page 136

1 here is that they are aggregate and this shows that that is not
2 harmed that leads to any injury. These are aggregated. These
3 are asbestos claimants. The public is able to inspect them and
4 to see them and to see who these claimants are. They're
5 similarly no serious injury that would occur to Garlock being
6 able to see these exhibits containing the names of asbestos
7 creditors.

8 THE COURT: Okay. I can't figure out what this one
9 is. I don't know what it is. I don't know where it came from.
10 It purports to be some summary but I don't know how it's been
11 put together and what it summarizes. I don't see that this one
12 is authenticated.

13 To the extent that what it purports to be is a list of
14 people who have filed a complaint in a court somewhere, then I
15 don't know whether it's accurate. I don't know what it
16 summarizes. I just don't know. I cannot figure out what this
17 exhibit purports to be.

18 MR. ESSERMAN: Or where it even came from.

19 MR. WORF: Well, we could represent we got it from the
20 Internet, Your Honor, but because -- as I said, this is not an
21 evidentiary hearing. Our --

22 MR. ESSERMAN: This is an evidentiary hearing.

23 THE COURT: It is an evidentiary hearing. That's why
24 I'm going over exhibits. Otherwise, I don't need exhibits.

25 MR. WORF: Again, we think there's no real reasonable

Page 137

1 dispute that this is what it says it is.

2 THE COURT: Well, it has to -- this has to be
3 authenticated. I have no idea what it is, where it came from,
4 and I can't take judicial notice of something that I can't
5 identify. I don't think this is a court document. It doesn't
6 look like one. If it is one, then this one has to give me more
7 information. I simply --

8 (Audio ends mid-sentence)

9 (Recess from 1:42 p.m. until 1:59 p.m.)

10 THE CLERK: All rise.

11 THE COURT: Please be seated. Okay. Mr. Worf you
12 were explaining where you got Exhibit 9.

13 MR. WORF: Oh, yes. Exhibit 9 we did get from the
14 court's website and for that reason we think it's a -- it's
15 authenticated for that reason.

16 THE COURT: Okay. Well, what is it?

17 MR. WORF: A list of impending asbestos cases by
18 plaintiff.

19 MR. ESSERMAN: I would just add that I think one look
20 at this exhibit and you know it's inaccurate because it shows
21 the case number which let's assume right now is accurate. The
22 style plaintiff is probably accurate but the style defendant
23 and I don't know whether this purports just to list the first
24 defendant or all the defendants or --

25 THE COURT: Yes. I don't think this is the type of

Page 138

1 court record that I can take judicial notice of and that can't
2 be verified, I think, without some authentication behind it.
3 It's possible it may be verified but I don't think it is right
4 now so I'll sustain the objection simply because I don't think
5 the exhibit is authenticated and I don't know what it is. I
6 don't know the accuracy and I don't know what it purports to
7 summarize except that it indicates that it's a summary of cases
8 but I don't know what cases. So, it's not a judicial record in
9 that sense. It's simply an administration function of some
10 sort. So, the objection is sustained for that reason.

11 MR. ESSERMAN: Number 10 is a list of master -- a
12 master ballot of Thornton & Naumes showing names of claimants
13 in the Pittsburgh Corning and their disease. We would object
14 to this as not being relevant to the issues which are presented
15 to the Court on the 2019s. These are the master ballots.
16 These may give certain information on number of claimants who
17 are filing -- who have voted by disease level and it does. It
18 shows the various breakdowns by disease of Thornton & Naumes
19 clients. It's an acceptance of the Pittsburgh Corning plan but
20 how this relates to the 2019 issues we think is irrelevant and
21 we have our 403 objection to it.

22 THE COURT: Mr. Worf?

23 MR. WORF: This is information, the ballots, that the
24 objectors have conceded that Garlock should have access to.
25 And it include -- and it's relevant because it includes most of

1 the very same information that's in the exhibits that Garlock
2 is attempting to obtain; the names of creditors and the disease
3 level that the creditor claims. And for that reason, it
4 demonstrates that the 2019 exhibits are not the kind of
5 information that a court will protect.

6 MR. ESSERMAN: I don't know that it necessarily
7 connects the disease level with the vote or the ballot. It
8 lists the last four digits of the Social Security number and a
9 disease level but doesn't necessarily connect it to a name.
10 And it's sort of broken down by 148 mesos, 260 lungs, 124 other
11 cancers, all properly done in the ballot itself but once again
12 I don't know if this is probative of anything on the issues
13 that the Court's being asked to decide today.

14 MR. WORF: But again, by ballot, I mean the master
15 ballot that was cast by the law firm as well as the exhibit
16 which does list every claimant covered by the ballot and the
17 particular disease level for that claimant. So, if you look in
18 the second column from the right, it's got disease level and
19 it's got everything ranging from asbestos level 2, so on and so
20 forth, lunch cancer, Mesothelioma, other cancer and it is
21 associated with particular claimants.

22 MR. ESSERMAN: Broken down by the last four digits of
23 their Social Security number. The ballots are the ballots. I
24 mean --

25 THE COURT: Yes, I think I can take judicial notice of

Page 140

1 these ballots, number one and number two. Again, I'm not sure
2 how probative they are of the 2019 information but they
3 certainly show that the information that you're looking at can
4 be obtained from the ballots. So, I don't see any reason not
5 to admit Exhibit 10. I think they're probative of what the
6 ballots in these particular cases say. I don't know the
7 relevance to 2019. I'll have to think about that. But I'm
8 going to at least conditionally admit Exhibit 10.

9 (Movant's Exhibit 10, master ballot of a certain law firm in
10 the Pittsburgh Corning case, was hereby received into evidence
11 as of this date.)

12 MR. ESSERMAN: Okay. We've discussed a little bit the
13 newspaper articles which is Exhibit 11. There's a bunch of
14 newspaper articles here and a letter from a congressman --

15 THE COURT: But Mr. Esserman, I have the same problem
16 with the newspaper exhibits. Those -- newspaper articles are
17 simply not done by percipient witnesses so I don't -- they're
18 hearsay. I don't see any probative value in that sense.

19 MR. ESSERMAN: I agree.

20 THE COURT: So --

21 MR. WORF: Your Honor, if you let me address that real
22 quickly.

23 These, unlike the previous newspaper article, are not
24 offered for their truth but for the fact that people are
25 writing articles about the topic that we have raised here which

Page 141

1 is inconsistent exposure allegations between bankruptcy forums
2 and tort forums. We're not offering them for the accuracy of
3 what they say but for the fact that the public has an interest
4 in it and, therefore, Garlock in its pursuit of this motion
5 admittedly for its own private interest is also serving the
6 public interest in advancing knowledge about this topic and
7 which is interest of which is demonstrated by these documents.

8 I believe the authentication objections are without
9 merit because these documents that purport to be newspaper
10 articles are self-authenticating. There's also an
11 authentication objection raised in the congressman's letter but
12 it is also self-authenticating as a publication purporting to
13 be issued by public authority in this case the office of a
14 congressman who's a -- who at the time was a ranking minority
15 member of the House Judiciary Committee. And for that reason,
16 all of these documents are admissible.

17 MR. ESSERMAN: I would just add quickly that while
18 these articles were opinion pieces by insurance company
19 lawyers, lawyers that appear before this Court who were
20 probably done at the behest of defendants perhaps even Garlock,
21 I don't know that they're probative of anything other than
22 they've got a good media man out there beating the bushes
23 trying to make their points.

24 MS. RAMSEY: Your Honor, and I can -- if I could just
25 also add to the record that I would like to make an objection,

Page 142

1 generally, to the suggestion or implication that is contained
2 in Garlock's statements that somehow by -- if they could
3 discover this that, in fact, they would disclose evidence of
4 such double-claiming and inappropriate conduct and false claims
5 that we keep hearing this theme of from Garlock.

6 MR. ESSERMAN: Exactly. They're prejudice pieces is
7 what they are. They're not based on any evidence.

8 MR. WORF: Well, none of that, Your Honor, is of
9 record the motives of these pieces. They are what they say.
10 Some are from the Wall Street Journal. One is from Forbes.
11 One is from a congressman and another one is from a newspaper,
12 The Dallas Observer.

13 THE COURT: Well, they're clearly hearsay. They're
14 clearly not admissible for the truth of what they purport to
15 say. To show that there is some public interest from time to
16 time in these issues, they say whatever they say and they're
17 admissible for that purpose. So, I will admit them for the
18 limited purpose of showing that on whatever dates and whatever
19 publications these pieces appear, they were written and they
20 say what they say but not for the truth of the content because
21 they are clearly hearsay with respect to the truth. So, one
22 second.

23 (Movant's Exhibit 11, collection of newspaper and other
24 documents demonstrating the public interest and concern
25 regarding asbestos claiming practices implicated by this

Page 143

1 motion, was hereby received into evidence as of this date.)

2 And with respect to the congressman's letter, it's a
3 letter that purports to say what it says. I have no idea what
4 the follow-up, if any, was with respect to this letter. That
5 doesn't appear in the document. So, to the extent that a
6 congressman suggested that it might be appropriate to take a
7 look at what the trusts are doing and the claiming behavior, I
8 think the letter says what it says but that's what it does.
9 So, again, I'll take it for the fact that the letter was
10 written and for no other purpose.

11 MR. LOCKWOOD: I think it would be fair to assume,
12 Your Honor, that if the letter had produced a hearing we'd have
13 heard from Garlock about it.

14 THE COURT: Well, in any event, it is what it is.
15 There was a letter written and I will take it for that purpose
16 and for no other.

17 All right, next?

18 MR. ESSERMAN: Okay. Next, I think is the last
19 numbered Exhibit which is the affidavit of Paul Grant. Clearly
20 hearsay. We don't think there's a foundation objection. We
21 don't think it's relevant nor calculated to lead to discuss --

22 (Audio ends mid-sentence)

23 (Recess from 2:09 p.m. until 2:24: p.m.)

24 THE COURT: Please be seated. We're going to be
25 moving to Judge Gross's courtroom as soon as they have

Page 144

1 everything set up up there but apparently we're okay to work
2 here for another ten or fifteen minutes until they set up up
3 there. So, hopefully, maybe, we can get this case concluded
4 and start with SPHC upstairs.

5 But okay. We were -- Mr. Esserman, affidavit of Mr.
6 Grant, Exhibit 12, clearly hearsay and no foundation and that's
7 where I lost you.

8 MR. ESSERMAN: Okay. We also think it's a question of
9 relevance. I would note that notwithstanding the fact it's
10 clearly hearsay, it's an affidavit that evidentially has been
11 put forth by Garlock in connection with certain -- in support
12 of their motion in their bankruptcy, in Garlock's bankruptcy,
13 for establishment of a bar date, proofs of claim, forms of
14 notice, estimation of claims, approval of case management
15 schedule and their response to the personal injury committee's
16 motions. I don't see that this is probative evidence of
17 necessarily anything other than Garlock's clear hearsay story
18 on how they see the world.

19 MR. WORF: Your Honor, we're not offering this for the
20 truth either. We're offering this to show that the needs that
21 Mr. Cassada ran through have been raised in Garlock's
22 bankruptcy case in one form through the filing of this
23 affidavit and to show that those issues are occurring in
24 Garlock's bankruptcy case and we're not offering it for the
25 truth of what it says but simply for that purpose.

1 THE COURT: All right. I don't think I need the
2 affidavit for that purpose. I have counsel's representation on
3 this record and at this point I think that's enough. I don't
4 think this is really substantive evidence for that point. So,
5 I accept counsel's representation that these issues are of
6 significance in Garlock's bankruptcy case. I don't think that
7 really at this point is determinative. So, I'll sustain the
8 objection to Exhibit 12.

9 MR. ESSERMAN: I actually think it's Exhibit A.

10 THE COURT: Oh, it is Exhibit A. I'm sorry.

11 MR. WORF: It was, yes.

12 THE COURT: Yes.

13 MR. ESSERMAN: If it's 12 I missed it.

14 THE COURT: No, it's A.

15 MR. ESSERMAN: Okay. Next is Exhibit B which is a
16 Court order on the motion of the official committee of asbestos
17 personal injury claimants for entry of a scheduling order and
18 debtors' motion for estimate -- establishment of asbestos
19 claims bar date. You know, it's a Court order or it's being
20 represented as a Court order. It's unsigned but it's
21 represented that it has been signed. It looks like it was
22 pulled from the docket. Actually, it was signed on the first
23 page; I'm sorry. We have the same 403 argument as to whether
24 it's probative of anything, whether it's calculated or lead to
25 discovery of admissible evidence and whether it's proof of

1 anything in this matter.

2 THE COURT: Mr. Worf?

3 MR. WORF: This is again to show that there's pending
4 litigation in Garlock's bankruptcy case or at least pending
5 discovery in Garlock's bankruptcy case to which statements in
6 Garlock seeking for that purpose. And it's also a publicly
7 filed record.

8 THE COURT: Well, yes, if it's a Court order in
9 Garlock's own bankruptcy case, again, I can take judicial
10 notice of it. I'm not really sure of the relevance but I also
11 don't see any harm in admitting the fact that this Court order
12 is there that establishes -- or that is a request, I should
13 say, for the order that has been signed. So, Exhibit B will be
14 admitted.

15 (Movant's Exhibit B, court order on the motion of the official
16 committee of asbestos personal injury claimants for entry of a
17 scheduling order of bar date, was hereby received into evidence
18 as of this date.)

19 MR. ESSERMAN: Okay. Exhibit C is the 2019 order that
20 Your Honor entered. It appears to be Your Honor's signature.
21 We think it's fine. If Your Honor will authenticate it for us.
22 Please take the stand.

23 UNIDENTIFIED SPEAKER: I want an authentication
24 objection unless we swear in the judge.

25 MR. ESSERMAN: I know your signature. This is it.

Page 147

1 THE COURT: Which 2019 order? I'm sorry?

2 MR. ESSERMAN: This is Pittsburgh Corning.

3 THE COURT: All right. Again, I've taken judicial
4 notice. I can take judicial notice of this and it is what it
5 is. So, I don't see any problem of the admission of this
6 order. So, I'll admit Exhibit C.

7 (Movant's Exhibit C, 2019 order for Pittsburgh Corning by Judge
8 Fitzgerald, was hereby received into evidence as of this date.)

9 MR. ESSERMAN: Exhibit D is a 2019 statement filed in
10 Pittsburg Corning. It's three pages. It's sort of the same
11 objection in that I'm not sure necessarily what probative value
12 it has but it is what it is. Your Honor can take judicial
13 notice of it. It's a pleading in Pittsburgh Corning of a 2019
14 statement. We think it's sort of cumulative but if Your Honor
15 wants to look at all these 2019 statements, have at it.

16 THE COURT: I'll take judicial notice of Exhibit D.

17 MR. WORF: E is the same kind of document just to
18 moves things along.

19 THE COURT: Which case is E in, please?

20 MR. WORF: This recording.

21 THE COURT: Same. Okay. I'll take judicial notice of
22 that too.

23 MR. WORF: And then, Mr. Esserman, we have not offered
24 F, G or H.

25 MR. ESSERMAN: Okay.

Page 148

1 MR. WORF: They're attached to our motion but we have
2 not offered them here.

3 MR. ESSERMAN: Okay. For the record I have no
4 objection to those exhibits. I is order granting access to the
5 2019 statements in Owens Corning. We're not sure that this is
6 necessarily -- well, it is what it is. Your Honor can take
7 judicial notice of it but we're not sure it's probative of any
8 issue in this case and that there's anything that it will offer
9 to Your Honor other than it's an order entered in a closed case
10 six years ago. But it is what it is.

11 THE COURT: Well, I'll take judicial notice of Exhibit
12 I but the circumstances in Owens Corning and the circumstances
13 here are much different. So, I don't see the relevance to that
14 particular word of it. It's there and I did permit that access
15 but it wasn't for the same alleged purposes as here and I don't
16 see the relevance of the document. So, I'll take judicial
17 notice of it but as to relevance the objection is sustained.

18 MR. ESSERMAN: Okay.

19 MR. WORF: And we offer, just to note, we thought it
20 was particularly illustrative because the order provided that
21 "Nothing in this order shall be deemed to prohibit the use of
22 the information contained in the 2019 statements on an
23 aggregate basis in connection with the estimation proceeding
24 currently scheduled to commence in the district court."

25 THE COURT: Right. Well, that was why I say it's a

Page 149

1 whole different basis from what Garlock is attempting to submit
2 here.

3 MR. WORF: Well, I think it shows -- we offered it to
4 show that these documents have been used in estimation -- or
5 oversaw it for use in an estimation proceeding just like Judge
6 Hodges has ordered discovery to commence on estimation of
7 Garlock's liabilities. We offered it for that purpose.

8 THE COURT: Isn't this -- was this order via or in the
9 Owens Corning case?

10 MR. WORF: Yes, Your Honor. I believe this was
11 entered in the Owens Corning case.

12 THE COURT: Right. So, doesn't it make sense that
13 you'd use the information in your own case and the 2019s were
14 given access to certain entities that were going to do with
15 things in comparison between ballots to make sure that certain
16 parties had authority to represent it. It was and order
17 entered in the case for the use in the case. So, I don't see
18 the relevance.

19 I take judicial notice of Exhibit I but the relevance
20 is not there and I sustain the objection with the relevance.

21 MR. ESSERMAN: Your Honor, the only thing I would note
22 for the exhibit is that it is not signed, it is dated January
23 blank 2005, and the pleading attached to it is not signed
24 either so I don't know if this is a draft or not.

25 MR. WORF: I'm not sure what copy you got. The copy

Page 150

1 that we have is signed and dated January 11th of 2005.

2 MR. ESSERMAN: I got what you gave me.

3 MR. WORF: It might be a situation where the pdf when
4 it was saved didn't save this image or something like that.

5 MR. ESSERMAN: Well, Garland just verified that ours
6 is not signed.

7 MR. WORF: Okay. We'd be happy to provide you with a
8 signed one.

9 THE COURT: I'm sure I signed an order to that effect.

10 MR. ESSERMAN: I'm sure you did too.

11 THE COURT: Whatever the order is, I have no objection
12 taking judicial notice to. I did it for the reasons that were
13 expressed in that case for use in that case and I think that's
14 appropriate. This is a whole different request by a third
15 party for information not in the specific case in which they
16 want to use it.

17 MR. ESSERMAN: Right.

18 THE COURT: Okay. Next.

19 MR. ESSERMAN: Okay. So, we'll have a sustained
20 relevance objection there.

21 Exhibit J is the next one which is the order in
22 Congoleum, the 2019 order in Congoleum. We object to this
23 order in Congoleum. It is a -- I believe it's a signed order
24 from Judge Ferguson in which Judge Ferguson decided to go a
25 different way. There's been some discussions of the Congoleum

Page 151

1 2019, the type of case and why that case was different than
2 this case already.

3 In this case but I'm not sure what probative evidence
4 this is of anything other than the one judge that I'm aware of
5 that didn't file the 2019 orders in -- that Your Honor has set
6 forth.

7 THE COURT: Mr. Worf?

8 MR. WORF: This is another situation where, and we did
9 see earlier the Plant and Thorpe cases where they -- exhibits
10 to the statements were filed on the docket. This is an example
11 of another case where that was provided for. It is,
12 therefore, precedent for court's finding that the information
13 contained in the 2019 exhibits is not the kind that a court
14 will protect.

15 And I would mention again that this Court has not made
16 findings to that effect. Those are the findings that this
17 Court would have to make now in order to deny Garlock access.
18 As Mr. Cassada explained, the 2019 orders here were not sealing
19 orders, they were procedural orders. These are examples of
20 judges who considered a sealing argument and found it to have
21 no merit and put the documents on the electronic docket.

22 MR. ESSERMAN: I mean it is what it is. It's one
23 judge that's decided to go a different way in a failed pre-pack
24 case.

25 THE COURT: Well, I think Judge Ferguson was dealing

Page 152

1 with a whole series of different issues in Congoleum than he's
2 facing a number of courts in bankruptcy cases. Nonetheless,
3 she ruled a certain way. I don't see any problem in taking
4 judicial notice of her order. It is what it is. And people
5 either followed or didn't follow, I don't know. But the order
6 is clearly there. It is an example of a 2019 statement that's
7 been approved and I'll admit it for that purpose.

8 (Movant's Exhibit J, 2019 order in the Congoleum bankruptcy
9 case, was hereby received into evidence as of this date.)

10 MR. ESSERMAN: Okay. Exhibit K is a Waters & Kraus
11 2019. It was filed in Congoleum. We'll assume that it is --
12 although I'm not sure that it has proper foundation, we'll
13 assume that it was pulled from the Internet which I guess is a
14 great source but does have some indication that it was pulled
15 from the docket, or copied from the docket. We'd have the same
16 objection to this Waters & Kraus 2019 that we have for the
17 order that was just entered in -- or order that was just
18 admitted for the limited purposes of the Congoleum 2019. That
19 is, this is a law firm that filed a 2019 statement in response
20 to the Congoleum 2019 order which is what I think they proposed
21 to introduce it for. We object to its relevance on 403 grounds
22 as not probative of anything in connection with their motion.
23 Whatever Your Honor wants to do with it.

24 THE COURT: Mr. Worf?

25 MR. WORF: Again. Same purpose to show that the

Page 153

1 information is not the kind that a court will protect. I would
2 note that this is even more fulsome than the exhibits that were
3 filed in these twelve cases in addition to the claimants' name
4 four digits -- in addition to the claimants' name and claim
5 disease, there are also co-counsel relationships on this
6 statement and there are the last four digits of Social Security
7 numbers as well as what appears to be a home address. So, if
8 anything, these are more fulsome than the ones that are filed
9 in these cases. And this again, was filed on the electronic
10 docket as it says.

11 MR. ESSERMAN: This was a whole different -- Congoleum
12 is a whole different facts and circumstances type of case as
13 we've discussed here many, many times and Your Honor can do
14 with it what she wants but we don't see the relevance to 2019
15 here.

16 THE COURT: Well, it was clearly a different kind of
17 case. And again, it's just -- it's an example of a 2019 filed
18 in response to a Court order that an order that it be filed.
19 So, to the extent that it's a lesser of two but the fact the
20 parties are complying with the Court orders is what they're
21 including, I don't see that that it is not admissible for that
22 purpose. It's probative here, I guess, to the extent that it's
23 suggested -- at least one court hasn't found it necessary to
24 protect this type of information. So, I'll admit it or that
25 purpose.

Page 154

1 (Movant's Exhibit K, 2019 statement filed in the Congoleum
2 case, was hereby received into evidence as of this date.)

3 MR. ESSERMAN: In the context of that case?

4 THE COURT: Well, obviously, it has to be admitted in
5 the context of the case.

6 MR. ESSERMAN: Okay. Exhibit L is a complaint, Puller
7 v. ACandS and others that was purport -- it's purported to be a
8 complaint. It's not authenticated and we did make that
9 objection as well as improper foundation. We don't think it's
10 relevant or similar to the other types of public complaints
11 that Garlock sought to introduce in connection with this
12 motion. We don't think that this is particularly illustrative
13 of anything other than a complaint filed by an asbestos
14 creditor against a bunch of defendants in the City of
15 Baltimore.

16 THE COURT: Mr. Worf?

17 MR. WORF: This is a publicly filed complaint that
18 contains the claimants' name and claim disease and is
19 probative, again, of the fact that such information, the
20 information on these 2019 exhibits is not the kind that courts
21 protect asbestos claimants routinely when they participate in
22 litigation, disclose their identity that claim disease.

23 On the authentication point, I would note that first
24 of all it was a court filed document. Second, the law firm
25 that filed this complain is one of the objectors here and has

Page 155

1 not put forward any evidence showing that it's not what it says
2 it is.

3 MR. ESSERMAN: It's further hearsay, Your Honor, but
4 it's represented to be a complaint. It is what it is. I'm not
5 sure it's probative of anything other than someone decided it'd
6 make an affirmative filing in a judicial proceeding. This is
7 not a lawyer filing an agency certificate which a 2019
8 statement is. So, I'm not sure it's relevant to any issue
9 before the Court.

10 THE COURT: Well, I'm not either. I think this is in
11 the same category as the Chapter 13 bankruptcy petition,
12 whatever that particular exhibit was, that somebody filing a
13 complaint in state court system does what the state court
14 system requires it to do. And to the extent there's a name and
15 address on it, there's a name and address on it and I don't
16 think anybody's challenging the fact that there are pleadings
17 filed in various cases that contain names and addresses. So, I
18 don't think it's a major issue one way or the other.

19 I don't think because -- that it is relevant to the
20 2019 issue because it's not filed in the same fashion and for
21 the same purpose. But I don't think anybody's challenging the
22 underlying premise that in some instances people put their
23 names and addresses on the public record. So, I'm not going to
24 admit Exhibit L. The objection is sustained. But the point
25 that it purports to represent has been made by counsel and I

1 accept that point.

2 MR. ESSERMAN: Exhibit M is some interrogatory
3 responses in some Harris County litigation by a client of The
4 Lanier Law Firm and, frankly, I don't know the circumstances of
5 how Garlock came in contact with these responses because in
6 Texas under the state procedural laws and this is asserted to
7 be a state court document, discovery responses are not filed on
8 the public record. They are not filed with the courts.
9 They're filed only between the attorneys unless somehow this
10 was -- this got filed in the public records. But, if anything,
11 Texas rules specifically provide that no discovery is supposed
12 to be filed in a public record. So, I don't know where they
13 got this. I don't know -- I'm not sure what it is. We have
14 the same 403 relevance objections that we had to the other
15 pleadings. But this one is a little more accentuated because
16 of the public rules in Texas.

17 THE COURT: Mr. Worf?

18 MR. WORF: Yes. And I have no knowledge about whether
19 this was filed or not. This was in the possession of Garlock's
20 counsel and beyond that I don't know anything. But it is --
21 there's no real dispute that it is interrogatory responses and
22 that it contains information about the plaintiff's name,
23 address, claims, condition and Social Security number.

24 THE COURT: Well, if it's not filed, it's clearly not
25 probative of the fact that the information isn't protected

Page 157

1 because the whole point that you're making, I think, is that it
2 shouldn't be protected because it's filed in the public record.
3 If it's not filed in the public record it's not something
4 that's been disclosed. So, how you came about it and whether
5 it is properly authenticated is something that has to be
6 proven. I can't take judicial notice of a document that
7 doesn't even appear in the filing. And if you can't tell me
8 that it is then I -- there's nothing I can do with this one in
9 the current state. So, the objection to the Exhibit M is
10 sustained.

11 MR. ESSERMAN: Exhibit N is the voting procedures for
12 Pittsburgh Corning. At least it's asserted --

13 MR. WORF: And that's another one I don't believe we
14 offered.

15 MR. ESSERMAN: Okay. All right.

16 THE COURT: O?

17 MR. ESSERMAN: N was not offered.

18 THE COURT: Yes.

19 MR. ESSERMAN: Okay. Was O offered? That was --

20 MR. WORF: Yes.

21 MR. ESSERMAN: Okay. O is the state -- 2019 statement
22 of the Motley Rice firm in the Quigley case. We have the same
23 objection that we had to the other 2019 statements that were
24 filed in other cases. This particular statement looks like
25 they did not put the addresses for most -- I don't know; maybe

Page 158

1 they did, maybe they didn't but it's hard to read. But
2 regardless, I'm not sure it's relevant in any way to the access
3 motion of Garlock in this case as to what Motley Rice did or
4 did not file in response to what order we don't know, and what
5 circumstances we don't know. What the court required and
6 clearly I don't know. So, I'm not sure it's probative of
7 anything.

8 MR. WORF: This is yet another court that did not seal
9 this information and it has the claimants' name, what appears
10 to be a home address.

11 MR. ESSERMAN: Are you making that representation or
12 do we know that?

13 MR. WORF: Well, I'm not making that representation
14 but -- unless the Motley Rice firm as what appears to be
15 hundreds of different address, I would think that's the
16 claimants' address but I can't represent that. It may say in
17 the exhibit which I have not read right now but -- and it has a
18 claimants' claimed disease and certain other information. So,
19 again, it goes to the same point we've been making on several
20 occasions today.

21 THE COURT: Okay. Again, I think this is the
22 equivalent of someone filing a 2019 statement in connection
23 with an order. The difference is in Congoleum I have the
24 order. Here, I don't know what the order requires. But
25 nonetheless if it's on the public record I take judicial notice

Page 159

1 of the fact that it's on the public record and it says what it
2 says so I will admit Exhibit O for that purpose.

3 (Movant's Exhibit O, 2019 statement in the Quigley case, was
4 hereby received into evidence as of this date.)

5 MR. ESSERMAN: Okay. Exhibit P is -- did you offer
6 Exhibit P?

7 MR. WORF: No.

8 MR. ESSERMAN: Okay. So, I won't comment. How about
9 Q?

10 THE COURT: I think -- I thought it was the end.

11 MR. ESSERMAN: Am I done?

12 MR. WORF: There's the order that was attached to our
13 reply brief and it's the order in the Accuride case. This
14 might be more in the nature of unpublished authority than of
15 actual evidence. But regardless of which one of those two is
16 the proper category, we do intend to use it.

17 THE COURT: Well, Accuride is a different case. These
18 are my asbestos creditors, were they? These didn't have
19 diseases and name levels. This is a whole different category
20 of claimants filed -- of not claimants but information that's
21 in the 2019 statement, isn't it?

22 MR. WORF: That's right. But it's -- we think it's
23 very illustrative, first of all, because it's 2019 statements
24 and they were originally sealed for some purpose and when the
25 Dow Jones came in and saw it accessed, they were permitted to

Page 160

1 have access and the statements were unsealed and Dow Jones had
2 an interest in analyzing the statements to examine certain
3 trading behavior and they were allowed to do so in statements
4 probative and they were given access. It shows that the right
5 applies to the statements and that a similar result should
6 occur here.

7 MR. ESSERMAN: We don't think this is probative
8 evidence of their motion.

9 THE COURT: It's not. I think there is an opinion of
10 the Court which itself would be hearsay but nonetheless
11 explains why the Court has permitted the access to the
12 statements. So, although the Court's opinion itself is hearsay
13 I think to the extent that there is any indication that there
14 is some authority by virtue of the cases that 2019 statements
15 can be disclosed under some circumstances, I don't have any
16 dispute with that proposition to start with. The issue still
17 is whether these ought to be disclosed and under what
18 circumstances. So, I don't see that Exhibit O is -- or I'm
19 sorry; this is B-2, I think, you called this?

20 MR. WORF: Yes.

21 THE COURT: Okay. Exhibit B-2 I don't think is
22 probative and I'll sustain the objection to the exhibit.

23 MR. ESSERMAN: And I may be mistaken but I think that
24 that's the last -- is that the last exhibit?

25 MR. WORF: I believe so. And again, we intended to

Page 161

1 use this more in the nature of unpublished authority than as an
2 exhibit and we would still like to use it for that purpose.

3 THE COURT: No. I've not admitted this exhibit. I
4 don't see it's probative, that it has any probative merit
5 whatsoever and it's clearly not relevant for a 2019 statement
6 that deals with asbestos parties revealing personal information
7 when this is a financial issue which is really what Rule 2019
8 was designed to have disclosed in the first place. So, the big
9 problem with Rule 2019 in the asbestos context is as I've said
10 before, it doesn't fit very well. It's there saying that
11 creditors' committees and entities have to file these
12 statements but it's really never been intended to apply in this
13 kind of context. Section 524(g) and the other asbestos
14 provisions weren't even enacted at the time that Rule 2019 was
15 put in place. So, it just doesn't fit on all fours.

16 I have ordered the parties to file the 2019 statements
17 for the reasons I've gone into and don't need to repeat now.
18 But I think some of the information that is included therein
19 really is private in the sense that 2019 really didn't intend
20 to have revealed. The ballots? Yes. The 2019 statements?
21 No. So, I don't see that this exhibit is probative. It's not
22 an asbestos case. It meets 2019 in a different fashion in an
23 issue that involves financial aspects of things and not disease
24 and estimations of disease claims in many different ways. It's
25 not relevant. The objection is sustained.

Page 162

1 MR. ESSERMAN: And since they are not seeking
2 admission of any other document, we rest, Your Honor. Thank
3 you.

4 THE COURT: Okay. Is there anything other than my --
5 oh, I need to give you a chance to reply, Mr. Cassada.

6 MR. CASSADA: Your Honor, I believe the Court's been
7 very patient and indulgent and we've taken enough of the
8 Court's time. Mr. Esserman just closed. Obviously, we've
9 offered all the evidence we're going to offer. We would move
10 to close the record subject to our reservation of rights with
11 respect to the exhibits that were not admitted and urge the
12 Court to rule on the motions.

13 THE COURT: All right. Does anyone else have any
14 other argument or evidence that they're presenting? Has
15 everybody who has made any presentation or filed any objection
16 rested to the extent that there is this evidentiary issue? All
17 right. I'm hearing nothing from anyone. I take that as an
18 affirmative yes, everybody has rested. If that's not correct,
19 speak now. Okay. Thank you. I will take this matter under
20 advisement and get you some orders. Thank you.

21 MR. ESSERMAN: Thank you, Your Honor.

22 THE COURT: We're moving to Judge Gross's courtroom on
23 the sixth floor.

24 THE CLERK: I've been told that it's not ready.

25 THE COURT: Not ready. Okay. We're going to start

Page 163

1 SPHC and I believe we'll do it on the sixth floor so that we
2 eliminate this computer issue, hopefully. Mr. Werkheiser?

3 MR. WERKHEISER: Your Honor, I just wanted to ask on
4 behalf of the Garlock counsel if we've been excused from the
5 further hearing?

6 THE COURT: Oh, yes. Anybody's excused who's not
7 interested in SPHC matters because I think I've addressed
8 everything that was on file. Thank you.

9 (Whereupon these proceedings were concluded at 2:52 p.m.)

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	MOVANT	DESCRIPTION	JUDICIAL	EVID.
			NOTICE	
7	1	2019 statements filed by	115	
8		certain firms		
9	3	2019 statements filed by Kazan		122
10		McClain, Brayton Purcell and		
11		Waters & Kraus in the Plant		
12		Insulation and Thorpe Insulation		
13		Cases		
14	10	Master ballot of a certain law		140
15		firm in the Pittsburgh Corning		
16		case		
17	11	Collection of newspaper and		142
18		other documents demonstrating		
19		the public interest and concern		
20		regarding asbestos claiming		
21		practices implicated by this		
22		motion		
23				
24				
25				

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2 I N D E X , cont'd

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4 E X H I B I T S

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6	MOVANT	DESCRIPTION	JUDICIAL	EVID.
			NOTICE	
7	B	Court order on the motion of the official committee of asbestos personal injury claimants for entry of a scheduling order of bar date		146
12	C	2019 order for Pittsburgh Corning by Judge Fitzgerald		147
14	D	2019 statements filed in the Pittsburgh Corning case	147	
16	E	2019 statements filed in the Pittsburgh Corning case	147	
18	I	Order granting access to 2019 statements in the Owens Corning case	148	
21	J	2019 order in the Congoleum bankruptcy case		152
23	K	2019 statement filed in the Congoleum case		154
25				

Page 166

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2 I N D E X, cont'd

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4 E X H I B I T S

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6 MOVANT DESCRIPTION JUDICIAL EVID.

NOTICE

7 O A law firm's 2019 statement 159

8 in the Quigley case

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Page 167

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2 C E R T I F I C A T I O N

3

4 I, Lisa Bar-Leib, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

8

9 LISA BAR-LEIB (CET**D-486)

10 AAERT Certified Electronic Transcriber

11

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17 Date: April 4, 2011

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